

Report on the

Alabama Securities Commission

Montgomery, Alabama



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June 22, 2011

Senator Paul Bussman
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Bussman,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Securities Commission** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Securities Commission**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

Examiner
Robin Hutcheson

CONTENTS

PROFILE	1
Purpose/Authority	1
Characteristics	1
Operations	2
Financial	4
SIGNIFICANT ISSUES	6
STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES	6
ORGANIZATION	7
PERSONNEL	8
PERFORMANCE CHARACTERISTICS	9
COMPLAINT HANDLING	11
REGULATION IN CONJUNCTION WITH OTHER ENTITIES	13
SMART GOVERNING	16
FINANCIAL INFORMATION	19
Schedule of Fees	21
Schedule of Receipts, Disbursements, and Balances	22
Operating Receipts vs. Operating Disbursements	23
QUESTIONNAIRES	24
Commission Member Questionnaire	24
Broker / Dealer Firm Licensees	26
Broker / Dealer Agent Licensees	30
Restricted Agent Licensees	33
Investment Advisor Firm Licensees	39
Investment Advisor Representative Licensees	48
Sale of Check Vendor Licensees	52
Complainant Questionnaire	57
APPENDICES	60
Performance Reports	60
Applicable Statutes	64
Commission Members	112
COMMISSION RESPONSE TO SIGNIFICANT ISSUES	114

PROFILE

Purpose/Authority

The Alabama Securities Commission was created by Act No. 740, Acts of Alabama 1969 and operates under the authority of the *Code of Alabama 1975*, sections 8-6-1 through 8-6-151 and sections 8-7-1 through 8-7-15. The commission enforces laws governing the issuance, sale, and other transactions relative to securities, including licensing and registration of broker/dealers, agents, investment advisors, and investment advisor representatives, as well as the sale of checks and industrial revenue bonds made within, into, or from the state of Alabama.

Characteristics

Members and Selection	7 members consisting of: <ul style="list-style-type: none">• 3 Ex-Officio Members<ul style="list-style-type: none">▪ Attorney General▪ Superintendent of Banks▪ Superintendent of Insurance• 4 appointed by the governor with the advice and consent of the Senate. <i>Code of Alabama 1975</i> , section 8-6-51(a)
Term	Appointed members - 4-year staggered terms Appointed members - no more than 2 consecutive terms Appointed member serves until a successor is qualified. Ex officio members terms are concurrent with the ex officio position <i>Code of Alabama 1975</i> , section 8-6-52
Qualifications	Appointed members -2 must be members of the Alabama Bar Association 2 must be certified public accountants. Ex officio membership is qualified based on the office held. <i>Code of Alabama 1975</i> , section 8-6-51(a) No member may be a registered dealer or salesman, or an officer, director, or a partner of any registered dealer or salesman. No member may be an officer, director, or partner of an issuer who has a registration statement issued by the commission <i>Code of Alabama 1975</i> , section 8-6-51(b)
Racial Representation	No statutory requirement. No minority race members
Geographical Representation	No statutory requirement

Consumer Representation	No statutory requirement
Other Representation	No statutory requirement
Compensation	<p>Appointed members receive \$50 per day, not to exceed a total of 60 days in any one calendar year while engaged in the performance of commission duties.</p> <p>Members are reimbursed for travel expenses the same as state employees</p> <p>Ex officio members receive no compensation for performing Securities Commission duties.</p> <p><i>Code of Alabama 1975</i>, section 8-6-54(a)(b)</p>
<u>Operations</u>	
Administrator	<p>Joseph P. Borg, Director, Classified Merit System position Annual compensation - \$141,784.80</p> <p>The salary of the director is required by law to be fixed by the commission in the salary range payable to attorneys in the merit system classification of attorney IV</p> <p><i>Code of Alabama 1975</i>, Section 8-6-56(c)</p>
Qualifications of Administrator	<p>The Director of the Securities Commission must be:</p> <ul style="list-style-type: none"> • Of good moral character, • At least 30 years of age, • A resident of Alabama, • A member of the Alabama State Bar, and • Thoroughly familiar with corporate organization, investment banking, investment trusts, the sale of securities, and the statistical details of the manufacturing industries and commerce of this state. <p>The director, while serving as such, shall not directly or indirectly be financially interested in or associated with any commercial bank, savings bank, trust company, industrial loan or investment company, credit union, building and loan association, or any other person subject to the jurisdiction of the commission or the director thereof.</p> <p><i>Code of Alabama 1975</i>, Section 8-6-56(a)(b)</p>

Location	<p>401 Adams Ave. Suite 280 Montgomery, AL 36104</p> <p>State law requires the commission to maintain offices in the capital city of the state</p> <p><i>Code of Alabama 1975</i>, Section 8-6-60</p> <p>Office Hours: Monday – Friday 8:00am – 5:00pm</p>														
Examinations	Examinations are administered by Prometric Testing and Pearson Professional Centers at the request of FINRA (Financial Industry Regulatory Authority). FINRA Processes and keeps all records of examinations required for Broker/Dealer agents, restricted agents, and investment advisor representatives.														
Licensees	<p><u>As of January 2011</u></p> <table> <tr> <td>Broker/Dealer.....</td><td>1,581</td></tr> <tr> <td>Broker/Dealer Agents.....</td><td>95,675</td></tr> <tr> <td>Investment Advisor Registration – State.....</td><td>85</td></tr> <tr> <td>Investment Advisor Registration – Federal....</td><td>981</td></tr> <tr> <td>Investment Advisor Representatives.....</td><td>3,973</td></tr> <tr> <td>Sale of Check Vendors.....</td><td><u>121</u></td></tr> <tr> <td>Total</td><td>102,416</td></tr> </table>	Broker/Dealer.....	1,581	Broker/Dealer Agents.....	95,675	Investment Advisor Registration – State.....	85	Investment Advisor Registration – Federal....	981	Investment Advisor Representatives.....	3,973	Sale of Check Vendors.....	<u>121</u>	Total	102,416
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Reciprocity	No statutory provision.														
Renewals	<p>Broker/Dealer; Broker/Dealer Agent; Investment Advisor; and Investment Advisor Representative registrations expire each December 31, unless renewed (<i>Code of Alabama 1975</i>, Section 8-6-3(f)(3))</p> <p>Sale of Check Vendors expires March 31 of each year. (<i>Code of Alabama 1975</i>, Section 8-7-9)</p> <p>Online Renewals</p> <ul style="list-style-type: none"> • Broker/Dealer; Broker/Dealer Agents; Investment Advisor; and Investment Advisor Representatives – 100% • Sale of Check Vendors – Online renewal not available 														
Continuing Education	<p>No state requirement,</p> <p>Financial Industry Regulatory Authority (FINRA) Rule 1120 requires that all registered persons must complete a designated Regulatory Element Program within a 120-day period that commences with the second anniversary of initial securities registration. This requirement reoccurs every three years thereafter, for as long as the registrant remains in the securities industry.</p>														

Employees	47 regular, full-time employees
Legal Counsel	<p>James R. McNeill, Assistant Director – Deputy Attorney General Edwin Reed, General Counsel –Deputy Attorney General Gregory Biggs,– Assistant Attorney General Jane Brannan,– Assistant Attorney General Leslie Worrell,– Assistant Attorney General Amanda Senn,– Assistant Attorney General</p> <p>All attorneys are regular employees of the commission.</p>
Subpoena Power	<p>Yes, both witnesses and records</p> <p><i>Code of Alabama 1975</i> section 8-6-15(b)</p>
Internet Presence	<p>http://www.asc.state.al.us/</p> <ul style="list-style-type: none"> • For Military; • Auction Rate Securities Settlements; • Presentation Request; • Agency Directory; • Investor Education & Fraud Prevention; • Investor Alerts; News Releases; • Annual Reports and Newsletters; • Administrative Actions; • Statutes, Regulations and Policies; • Alabama Filing Requirements; • Complaints; and • Helpful Web Sites for Investors.
Attended Board Member Training	None.
<u>Financial</u>	
Source of Funds	<p>Operating funds are obtained from licensing and registration fees from;</p> <ul style="list-style-type: none"> • Mutual Funds, • Exemptions, • Investment Advisor Registration • Investment Advisor Representative Registration, • Opinions, • Industrial Revenue Bonds, • Settlements resulting from investigations.
State Treasury	The commission operates through the State Treasury from special revenue funds 374, 375, 376, and 1042.

Required Distributions	<p>Some fees collected by the commission are required to be deposited directly into the state's General Fund.</p> <ul style="list-style-type: none"> • Qualifications fees, • Notifications fees, • Coordination fees, • Broker/Dealer Firms fees, • Salesman (agent) fees, and • Administrative assessments. <p><i>Code of Alabama 1975</i>, section 8-6-33</p> <p>In addition to fees deposited directly into the General Fund, the Legislature has enacted a series of one-time transfers to the General Fund from the commission's operating funds through annual appropriation acts.</p>
Unused Funds	Retained by the commission

SIGNIFICANT ISSUES

Significant Issue 2011 – 01

The commission is planning for the added cost and workload of regulating additional investment advisers, which results from a provision of the federal Dodd-Frank Financial Reform Act of 2010 that shifts responsibility away from the Federal Securities and Exchange Commission and to the states. Effective July, 2011, responsibility for regulation of financial advisers by the states will include financial advisers who manage assets of up to \$100 million. Prior to the act, states were responsible for regulation of financial advisers who managed assets of up to \$25 million.

Joseph P. Borg, Director of the Alabama Securities Commission, stated that no one yet knows all of the financial ramifications the act will have on the states. He stated that currently, the biggest issue facing the commission is being required to review investment advisors having up to \$100 million in assets, which means an increase of about 50% over 2010 in the number of reviews required to be done by the commission. The commission is in the process of hiring two more securities analysts and one trainee to help offset this increase.

Significant Issue 2011 – 02

Only two of the seven commission members responded to our survey for this review. Consequently, the responses to our survey of commission members presented in this report may not reflect the position of the commission as a whole.

Significant Issue 2011 – 03

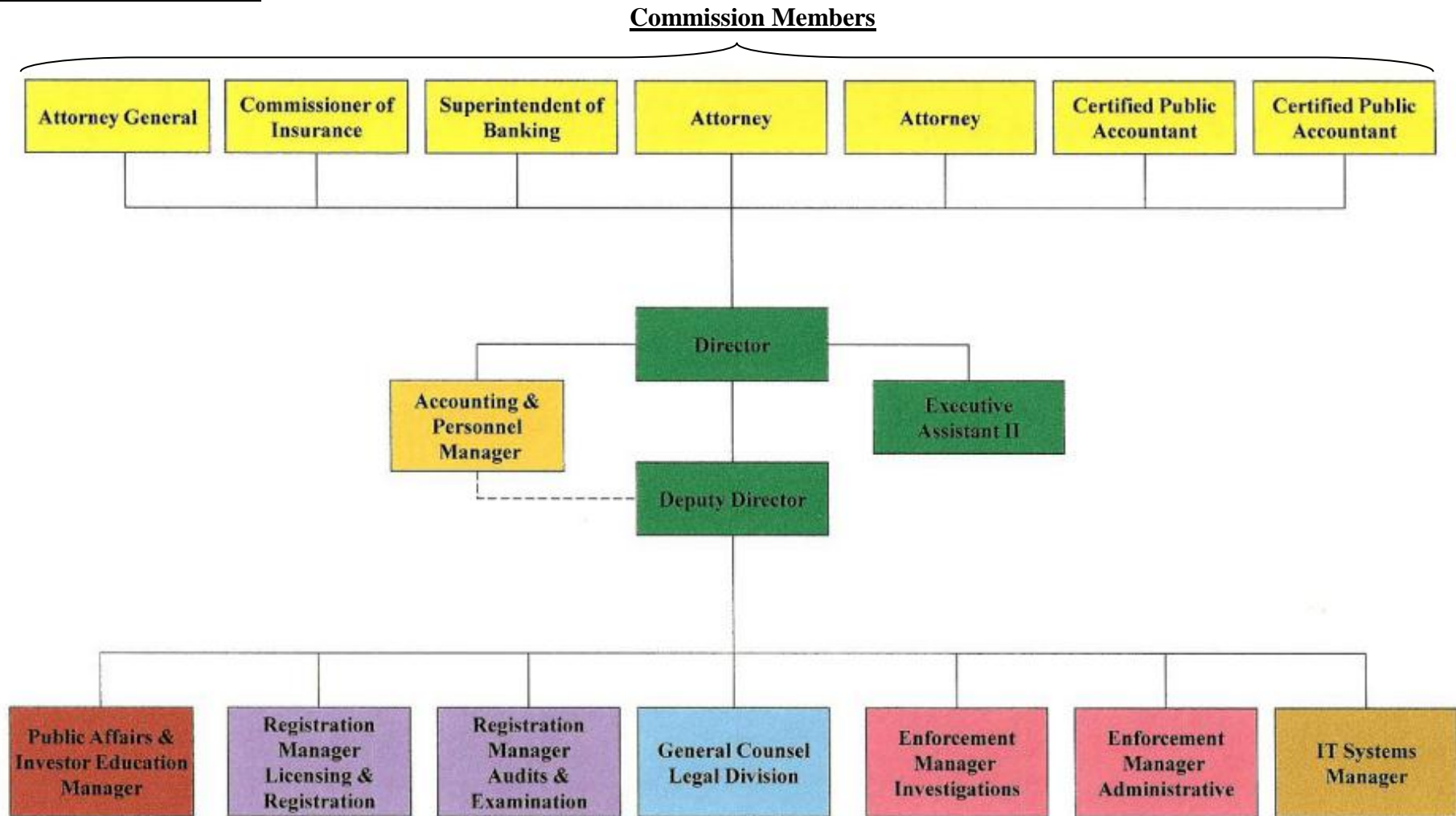
Of the 225 licensees who responded to our questionnaire, 53 licensees, 23.6%, state they are not adequately informed by the Alabama Securities Commission of changes to and interpretations of Alabama Securities Commission positions, policies, rules and laws.

The commission has an informative website, newsletters for legislative updates, and annual reports. The commission also follows the state's Administrative Procedure Act for notice of rule changes, repeals, and new rules, which includes publication in the Administrative Monthly and a period reserved for public input.

STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES

All prior findings/significant issues have been resolved.

ORGANIZATION



PERSONNEL

The commission employed 47 full time classified merit system persons as of February 2011.

Schedule of Employees By Merit System Classification/Sex/Race							
	#	B/M	W/M	B/F	W/F	O/M	O/F
<u>Merit System</u>							
Securities Commission Director	1		1				
Securities Commission Deputy Director	1		1				
Senior Special Agent	2		2				
Special Agent	10	2	8				
General Counsel	1		1				
Attorney I/II	2				2		
Attorney III	2		1		1		
Sec / Ins. Registration Manager	2				2		
Securities Analyst	8		2	5	1		
Training Specialist II	1		1				
Accounting Manager	1				1		
Public Information Specialist	1		1				
IT Systems Specialist	1		1				
Executive Assistant II	1				1		
Executive Secretary	1				1		
Legal Research Assistant	2				2		
Account Clerk	1			1			
IT Operations Technician	1		1				
ASA II	5				5		
ASA III	3				3		
Total	47	2	20	6	19		

B/M = Black/ Male; W/M = White/Male; B/F = Black/Female; W/F = White/Female; O/M = Other/Male;
O/F = Other/Female

The commission also employs a clerical aid on a temporary basis to assist with renewals.

Legal counsel is provided by in-house attorneys as listed above. In addition to attorneys listed as such above, the director and deputy director are also attorneys.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee as of January 2011 – 2,179 licensees per full time employee

Number of Persons per Licensee in Alabama and Surrounding States

Type of License	Alabama*	Florida*	Georgia ¹	Mississippi**	Tennessee***
Population^a	4,779,736	18,801,310	9,687,653	2,967,297	6,346,105
Broker/Dealer Firm	1,581	2,809		1,428	1,528
Broker/Dealer Agent	95,675	239,070		79,307	95,744
Investment Advisor Firms - State	85	1,168		52	183
Investment Advisor Firms- Federal	981	3,357		822	1,264
Investment Advisor Representatives	3,973	26,729		1,817	4,869
Sale of Check Vendors	121	N/A		N/A	N/A
Total Licensees	102,416	273,133	Unknown	83,426	103,588
Persons per licensee	46.67	68.84	Unknown	35.57	61.26

^aSource: 2010 U.S. Census

*Data as of January 11, 2011

**Data as of January 1, 2011

***Data as of January 3, 2011

¹Requests have been made of Georgia; however no information has been received.
The information requested is not shown on Georgia websites

Operating Disbursements per Licensee - \$49.90 per licensee 2010FY

Notification to Licensee of Commission Decisions to Amend Administrative Rules

The commission complied with notification procedures prescribed in the state's Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes.

Investigations/Audits

According to commission's securities/insurance registration managers, the commission's Auditing and Examination Division conducts onsite routine audits and also conducts for-cause audits. In addition, the auditing division conducts joint audits with other states on a limited basis, when needed for complex audits and enforcement investigations.

The managers stated that the commission routinely audits each of the state-regulated investment advisers domiciled in Alabama on a 3 year cycle and audits broker dealers and their branch offices on a for-cause basis. The for-cause audits result from investigations, customer complaints and/or licensing issues. The audits are designed to identify serious securities violations and potential weaknesses in sales practices in order to help strengthen the entities' compliance programs and to protect Alabama investors.

According to the managers, if an audit reveals minor records deficiencies, the commission helps the firm to resolve the deficiencies, but the deficiencies must be resolved before the commission will close the audit. If the deficiencies are more serious, such as fraudulent activity, auditors refer the deficiencies to the commission's legal division for the issuance of an order or to the enforcement department for additional investigation. Generally, the auditors work in conjunction with the enforcement division on such cases.

The auditing division also audits for accuracy and completeness the applications filed for broker/dealer registrations, agents registrations, investment advisor-state registrations, investment advisor representative registrations, exemptions from registration, eleemosynary exemptions from registrations (church bonds) , orders for expansion of exemptions, coordination of securities registrations with the SEC, registrations by qualification, and sale of check vendors licenses.

Effective July 2011, the federal Dodd-Frank Act of 2010 increases the states' regulatory responsibilities and makes the commission the only regulator for investment advisers who are domiciled in Alabama with up to \$100 million in assets under management (\$25 million before the act). According to the managers, implementation of the Dodd-Frank Act will increase by approximately 40 the number of routine audits of investment advisors by the commission.

Calendar Year	2010	2009	2008	2007
Investment Advisors				
Routine Audit	35	32	29	31
For-Cause Audit	4	2	2	0
Broker / Dealers				
Routine Audits	0	0	8	0
For-Cause Audits	4	11	6	7
Sale of Checks*				
Training Audits	1	0	0	0
For-Cause Audits	1	0	0	0
Audits of Applications Filed	292	309	309	339

*Began auditing sale of check vendors in calendar year 2010.

COMPLAINT HANDLING

Initial Contact/Documentation	Complaints can be brought by anyone, including commission members and staff. Complaints are received by mail, by phone or by FAX. A standard complaint form is available, and staff encourages its use, but the form is not required. Each complaint is assigned to a special agent, who notifies the complainant by letter of its receipt within 5 working days. Anonymous complaints are accepted.
Investigative Process(es)	Complaints are investigated by one of the commission's 10 special agents. Special agents are sworn law enforcement officers with statewide jurisdiction who are supervised by 2 senior special agents. Commission members are not involved in the investigation of complaints.
Probable Cause Determination	The investigating special agents determine if there is probable cause to believe if a violation of securities laws and regulations has occurred. Upon completion of an investigation, the special agents prepare a report with recommendations, which is forwarded to the two senior special agent supervisors for review. Complaints found to be without probable cause are filed with other complaints filed against the same person/company, but no action is taken.
Resolution without formal Hearing	<p>If probable cause is found, administrative actions are normally taken at an informal hearing held by the commission's executive director, a senior special agent, the investigative special agent, and the commission's legal counsel. Administrative orders in the name of the commission can be issued at this point, including an administrative assessment and the costs of investigation. A decision or administrative order resulting from an informal hearing can be appealed to the full commission.</p> <p>At this point, the matter may be referred to the courts at the discretion of the executive director, without a formal hearing by the commission.</p>
Formal Hearing	<p>If the issues in dispute cannot be resolved informally, or the respondent requests a hearing, the commission may conduct a formal hearing. The commission's decisions may be appealed to the Circuit Court of Montgomery County.</p> <p>As of May 9, 2011 the last full commission hearing completed was in June, 1998 and did not involve a licensee or registration. A number of hearings have been scheduled but were settled before the hearing.</p>
Notification of Resolution to the Complainant	Resolution of the complaint is communicated to the complainant by letter.

Information obtained from commission staff

SCHEDULE OF COMPLAINTS RECEIVED/CASES INITIATED OCTOBER 1, 2006 – SEPTEMBER 30, 2010					
FISCAL YEAR	2007	2008	2009	2010	TOTAL
Formal Case Investigations	63	73	78	72	286
Inquiry Investigations	110	94	88	77	369
Total Cases Received	173	167	166	149	655
<i>Information obtained from Senior Special Agent</i>					

SCHEDULE OF CLOSED CASE DISPOSITIONS* OCTOBER 1, 2006 – SEPTEMBER 30, 2010					
	2007	2008	2009	2010	TOTAL
Inquiry**	123	96	84	94	397
Not Actionable***	29	28	25	21	103
Administrative Action	35	33	41	48	157
Civil Action	0	1	0	0	1
Criminal Action	8	4	15	15	42
Total Complaints Closed	195	162	165	178	700
<i>Information obtained from Senior Special Agent</i>					

*Individual cases may include multiple complaints

**Preliminary investigation indicated that there was no probable cause

***Investigation completed. Investigation determined no violation of the Alabama Securities Act or any other state, federal or regulatory statute or rule.

Average Time to Resolve Complaints

AVERAGE MONTHS CASES REMAIN IN PENDING STATUS (In months)				
	2007	2008	2009	2010
Initial Inquiry Files	1.7	1.4	1.6	1.6
Substantive Files	15.2	14.6	22.2	19.6
<i>Information obtained from Senior Special Agent</i>				

SCHEDULE OF CORPORATE INQUIRIES OCTOBER 1, 2006 – SEPTEMBER 2010					
	2007	2008	2009	2010	TOTAL
Corporate Inquiries*	335	335	292	298	1260
<i>Information obtained from Senior Special Agent</i>					

*Corporate Inquiries are usually resolved within 30 days

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Financial Industry Regulatory Authority - FINRA (formerly NASD (National Association of Securities Dealers) – FINRA is a private self-regulatory organization (SRO) with authority over member securities broker-dealers, agents and sales practices. All firms dealing in securities that are not regulated by another SRO are required to be member firms of the FINRA. FINRA licenses individuals and admits firms to the industry, writes rules to govern their behavior, examines them for regulatory compliance, and is sanctioned by the U.S. Securities and Exchange Commission (SEC) to discipline registered representatives and member firms that fail to comply with federal securities laws and FINRA's rules and regulations. FINRA provides education and qualification examinations to industry professionals and sells regulatory products and services to stock markets and exchanges

To carry out its regulatory duties, FINRA operates a national database, the Central Registration Depository (CRD), under contract with the North American Securities Administrators Association (NASAA). The database contains registration and disciplinary information for all broker-dealers and their agents, which includes past employment history, regulatory exams, education, civil proceedings, customer complaints and certain criminal history. Any person associated with a member [of FINRA] firm who is engaged in the securities business of the firm—including partners, officers, directors, branch managers, department supervisors, and salespersons—must register with FINRA. The Alabama Securities Commission staff, along with the staff of other securities regulators and FINRA, enters and updates registration and disciplinary information in the CRD. The CRD is the primary licensing record for over 100,000 individuals and firms which annually license with ASC.

FINRA, in conjunction with the SEC, is also the systems operator for the Alabama Securities Commission and other states for operations of the IARD (Investment Advisor Registration Depository) and IAPD (Investment Advisor Public Disclosure) licensing and disclosure databases for Investment Advisors and Investment Advisor Representatives.

New York Stock Exchange (NYSE) - The commission coordinates its resources with the NYSE when working the same or a similar case involving market surveillance, insider trading and exchange of information on trading trends and practices.

U. S. Securities and Exchange Commission (SEC) - There is dual federal/state regulation of some securities. According to the commission, the SEC regulates firms, public securities issues and also investment advisers with assets of over \$25 million under management¹. Also included in SEC regulation are such issues as Reg A, Reg D, 506, 505 and 504, securities issues, among others. All matters pertaining to the Securities Act of 1933 and 1934 (as amended) are primarily within SEC jurisdiction and secondarily regulated by state regulators. Dual regulation is usually in the area of broker/dealer firms, broker/dealer agents, and stock issuers. There is less overlap with respect to investment advisors. The states have exclusive authority over investment adviser representatives, and the SEC does not register them. The SEC generally does not regulate broker /dealer agents except in fraud cases.

¹As of July 2011, the Alabama Securities Commission will regulate all Investment Advisors up to \$100 million in assets, an approximate increase of 50% of investment adviser firms and agents from 2010 levels. This occurred as a Congressional mandate pursuant to the Dodd-Frank Regulatory Reform Act of 2010.

North American Securities Administrators Association (NASAA) - According to the commission, NASAA is an association of state securities regulators. Each senior administrator, commissioner, or director of a state agency that regulates securities is a participating and voting member of the

organization. NASAA is membership driven and has an office in Washington, DC from which to monitor relevant legislation on a national level, as well as to provide access to the committees/working groups on particular issues of interest to state regulators. Through NASAA, multi-state projects, such as enforcement actions, are routinely coordinated. Policies are developed through NASAA committees for use by the states in order to promote uniformity. NASAA also acts as the clearinghouse for national examinations for investment adviser representatives and broker/dealer agents.

Commodities Futures Trading Corporation (CFTC) – The CFTC regulates commodities nationwide. Commodities and securities are closely related. According to the commission, the CFTC has worked with the Alabama Securities Commission on matters involving commodity pool sales in Alabama. Although the CFTC does not generally become involved in noncommodity matters, there is an overlap in the areas of licensing and product sales to the public. CFTC cases for enforcement and issues of registration routinely overlap the jurisdiction of the Alabama Securities Commission.

Federal Reserve/Comptroller of the Currency – According to the commission, the Alabama Securities Commission has contact with the Federal Reserve and the Comptroller of the Currency and other agencies involving banking and/or insurance activities generally relating to the sale of securities by banks and their affiliates.

Federal Trade Commission (FTC) - According to the commission, the Alabama Securities Commission has a very close relationship with the FTC, as the FTC is heavily involved with telemarketing/fraud solicitation activities. The Alabama Securities Commission claims that it is an acknowledged activist in the area of net surfing to address investment products offered through the internet, in telephone solicitations commonly called “cold calling,” in infomercials and in other forms of solicitation. The FTC, through NASAA, and with participation of the Alabama Securities Commission regularly holds surf days, conferences, meetings, exchanges of information and share a federal database maintained by the FTC.

Law Enforcement Coordinating Committee (LECC) - According to the commission, the Alabama Securities Commission maintains a relationship with the LECC, which is an organization of prosecutors organized through the U.S. Attorneys and the Department of Justice. Conferences and meetings are held regularly with U.S. Attorneys and staff in Alabama. Generally, the issues addressed involve bringing cases of securities fraud. The Alabama Securities Commission assists the U.S. Attorney in investigations, subpoenas, searches and seizures, etc.

Regional Organized Crime Information Center (ROCIC) – According to the commission, Alabama Securities Commission is a member of the Regional Information Sharing System (RISS). ROCIC regularly assists the Alabama Securities Commission with nationwide tracing, background criminal activity, trial spread sheets, link charts, etc. Annual training programs are held jointly.

National White Collar Crime Center (NWCCC) – According to the commission, the Securities and Investigation Database (SID) is maintained by NWCCC under contract with NASAA for all state securities regulators, including Alabama. The SID database is a compilation of enforcement data from the 50 states, the District of Columbia and Puerto Rico. NWCCC also provides research, training, trial document preparation, etc.

The Alabama Securities Commission also maintains regular contact with such agencies as the **U.S. Postal Inspectors, FBI, U.S. Customs, U.S. Treasury Dept., U.S. Department of Homeland**

Security, IRS, Manhattan District Attorney's Office, National Association of Attorney's General, *et al.*

The Alabama Securities Commission also routinely works with the following state agencies:

Alabama Department of Insurance – According to the commission, many securities agents hold insurance licenses and vice versa. The ASC maintains communication with the Department of Insurance with respect to agents who hold both licenses. The Alabama Securities Commission transmits information to the Department of Insurance on Alabama Securities Commission searches of the records of the Secretary of State or other records of a corporation's involvement in insurance and securities activities that may require dual licenses. The Department of Insurance provides the Alabama Securities Commission with information on complaints against insurance agents who may hold securities licenses.

State [of Alabama] Banking Department – According to the commission, banks continue to increase their business in securities and insurance. Consequently, there will be a greater need for exchange of information between banking and securities regulators. Securities activities on bank premises have been a difficult area to address. According to Alabama Securities Commission staff, there is a current controversy between the Comptroller of the Currency, the Federal Reserve, the Securities and Exchange Commission, and Congress concerning financial modernization. The issue of who controls; who oversees and who supervises the securities activities of banks is an issue that has not been resolved. The Alabama Securities Commission regulates activities of the securities subsidiaries of banks.

Alabama Development Office (ADO) – According to the commission, the Alabama Securities Commission is the clearing house for industrial development bonds, as most industrial development boards in Alabama cannot issue bonds without having first received a certificate from the Alabama Securities Commission. The Alabama Securities Commission notifies the ADO, as well as other agencies of state government of every application no-stop (clearance) order regarding industrial development issues. At times, the Alabama Securities Commission communicates with ADO, Industrial Relations, and other agencies about proposed plant construction and/or offerings.

Alabama Department of Senior Services – The Alabama Securities Commission helps to educate seniors in matters involving financial literacy, reporting of financial abuse of seniors, etc.

Office of Prosecution Services – The ASC maintains a close relationship with OPS and the Alabama District Attorney's Association (ADAA) as most criminal actions are prosecuted in conjunction with or with assistance from the various state District Attorneys.

SMART GOVERNING

2010 FISCAL YEAR

2010 GOALS	COMMENTS
1. Complete all registrations and exemption filings within statutory time frame.	Appears appropriate
2. Conduct a routine audit of at least 30 state registered and state domiciled investment advisers annually so that all are audited within a 4 year cycle.	Appears appropriate
3. Resolve enforcement cases within an average of 18 months of receipt by FY2010	This goal is actually an objective. By definition, a goal is a long-term target. Short term targets to be met within one year are defined as objectives. This goal is a short-term target to be met within one year.
4. Develop and implement a personal finance and investor education outreach program for military personnel and their dependents (all branches, active, reserve, and guard) by 2010	This goal is actually an objective. By definition, a goal is a long-term target. Short term targets to be met within one year are defined as objectives. This goal is a short-term target to be met within one year. Also, progress toward goals and objectives must be measurable. Progress toward accomplishing this goal is not measurable. The target is either met or not met.

2010 OBJECTIVES	UNIT OF MEASURE	TARGET	REPORTED PERFORMANCE	COMMENTS
Objectives for Goal # 1				
Quality 1. Issue securities registrations where appropriate for complete applications or issue deficiency letters within five business days of receipt.	% of applications processed within time frame	87	89	Appears appropriate. Reported performance can be reproduced from available records.
Quality 2. Process all complete applications filed through the national database for broker dealer agents, investment adviser representatives, broker dealer firms and investment adviser firms within ten days of receipt.	% of complete apps. Processed within time frame	85	98.7	Appears appropriate. Reported performance can be reproduced from available records.

Objectives for Goal # 2				
Quality 1. Conduct on-site component of routine investment adviser audits within 2 day time frame	Average days	2	1.9	Appears appropriate. Reported performance can be reproduced from available records.
Quality 2. Number of audits conducted on state registered and state domiciled investment advisers	Number of audits conducted	30	33	Appears appropriate. Reported performance can be reproduced from available records.
Efficiency 1. Complete 7.00 audits annually per FTE	# of audits per analyst	7	8.25	Appears appropriate. Reported performance can be reproduced from available records. .
Objectives for Goal # 3				
Quality 1. Maintain average time to resolve cases	Avg. mos. In which enforcement cases are resolved	18	10.47	Appears appropriate. Reported performance can be reproduced from available records.
Objectives for Goal # 4				
Quality 1. Increase the number of educational activities (i.e. meetings, workshops, events, website upgrade) by over 10% from FY08 through FY10	# of people informed / trained	216	316	Both the performance indicator and the reported performance are in terms of the number of people informed or trained, which is not consistent with the objective, which is in terms of a percentage increase in the number of activities.

2011 FISCAL YEAR

2011 GOALS	COMMENTS
1. Complete all registrations and exemption filings within statutory time frame by 2014..	Appears appropriate
2. Conduct a routine audit of at least 30 state registered and state domiciled investment advisers annually so that all are audited within a 4 year cycle.	Appears appropriate
3. Resolve enforcement cases within an average of 18 months of receipt by FY 2012	Appears appropriate
4. Maintain average fiscal year number of financial education and fraud prevention activities/events to reach citizens in Alabama	Appears appropriate

2011 OBJECTIVES	UNIT OF MEASURE	TARGET	REPORTED PERFORMANCE	COMMENTS
Objectives for Goal # 1				
Quality 1. Issue securities registrations where appropriate for complete applications or issue deficiency letters within five business days of receipt.	% of applications processed within time frame	90	Year not complete	Appears appropriate
Quality 2. Process initial applications filed through the national database for broker dealer agents, investment adviser representatives, broker dealer firms and investment adviser firms within ten days of receipt.	% of complete apps. Processed within time frame	90	Year not complete	Appears appropriate
Objectives for Goal # 2				
Quality 1. Conduct on-site component of routine investment adviser audits within 2 day time frame	Average days	2	Year not yet complete	Appears appropriate
Quality 2. Number of audits conducted	Number of audits conducted	30	Year not yet complete	Appears appropriate
Efficiency 1. Complete 7.00 audits annually per full time securities analyst	# of audits per analyst	7	Year not yet complete	Appears appropriate
Objectives for Goal # 3				
Quality 1. Maintain average time to resolve cases	Avg. mos. In which enforcement cases are resolved	18	Year not yet complete	Appears appropriate
Objectives for Goal # 4				
Quality 1. Present information and programs to help citizens make informed investment decisions and protect themselves from fraud.	# of educational activities/events	71	Year not yet complete	Appears appropriate

FINANCIAL INFORMATION

Source of Funds

Operating funds are generated from the recouped cost of investigations and licensing and registration fees from:

- Mutual Funds,
- Exemptions,
- Investment Advisor Registrations
- Investment Advisor Representative Registrations,
- Opinions,
- Industrial Revenue Bonds,

Fund Descriptions

The commission operates from the following funds within the state's accounting system:

Fund 374 – Sale of Checks Fund – Fund 374 was established by the *Code of Alabama 1975*, Section 8-7-6, to accumulate license and investigation fees for entities which engage in the business of selling, issuing, or dispensing checks or receiving money as agents for obligors for the purpose of paying obligors bills, invoices, or accounts. The fund is subject to the state's normal budgeting processes and must receive a legislative appropriation in order to disburse funds. The commission retains year-end balances.

Fund 375 – Alabama Securities Commission Fund – Fund 375 was established by the *Code of Alabama 1975*, Section 8-6-3(h) to receive initial or renewal registration fees for investment advisors or investment advisor representatives, exempted securities filing fees, mutual fund exemption filing fees, interpretive opinions or no-action letter filing fees and assessment of investigative costs. The fund is subject to the state's normal budgeting processes and must receive a legislative appropriation in order to disburse funds. The commission retains year-end balances.

Fund 376 – Industrial Revenue Bond Fund – Fund 376 was established by the *Code of Alabama 1975*, Section 8-6-115, to collect filing fees to issue certificates of notification of industrial revenue bonds. The fund is subject to the state's normal budgeting processes and must receive a legislative appropriation in order to disburse funds. The commission retains year-end balances.

Fund 1042 – Securities Fraud Settlement Fund – In the 2000 fiscal year, the commission received a series of court ordered settlements involving securities fraud. The funds from the settlement were deposited into fund 1042. The funds were invested by the State Treasurer's Office, with the interest from the investments remaining in the fund. Upon completion of the case and liquidation of certain assets, the fund balance was transferred to the victims named in the court ordered settlement. The fund remains in existence, but is not used and has no balance.

Required Transfers

The *Code of Alabama 1975*, Section 8-6-33 provides that, "All monies accruing to or collected by or through the Securities Commission shall be deposited when collected into the state treasury to the credit of the general fund, unless otherwise provided by law." Some fees collected by the commission are authorized by law for commission operations. Other fees collected by the commission must be deposited directly into the State Treasury to the credit of the state's general fund. Fees that must be

deposited into the general fund are qualifications fees, notifications fees, coordination fees, broker/dealer firm fees, salesman (agent) fees, and administrative assessments. Also, the Legislature in annual appropriations bills, often transfers money from the commission's funds to the state's general fund.

Deposited into the General Fund

	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>
Recording Fees	\$7,374,285.15	\$6,499,430.90	\$6,220,447.81	\$5,862,941.98
Assessments	1,125,738.21	301,260.33	85,905.60	282,623.83
Statutory Deposits	8,500,023.36	6,800,691.23	6,306,353.41	6,145,565.81
Appropriated Transfers	4,000,000.00	1,500,000.00	2,500,000.00	1,500,000.00
Grand Total	\$12,500,023.36	\$8,300,691.23	\$8,806,353.41	\$7,645,565.81

Schedule of Fees

“All monies accruing to or collected by or through the Securities Commission shall be deposited when collected into the state treasury to the credit of the general fund, unless otherwise provided by law.”

(*Code of Alabama 1975*, section 8-6-33)

Fee Type	Code of Alabama 1975 Section	Amount	Deposited to GF or ASC*
Broker Dealer Firms	8-6-3(h)	\$250.00	GF
Broker Dealer Agents	8-6-3(h)	\$60.00	GF
Issuer (restricted) Agents	8-6-3(h)	\$60.00	GF
Investment Advisor Firm	8-6-3(h)	\$250.00	ASC
Investment Advisor Agent	8-6-3(h)	\$60.00	ASC
Securities Registration:			
Coordination / Qualification	8-6-8(d)	\$40 application fee plus registration fee of 1/10th of 1% of proceeds in the state - Not less than \$100 not to exceed \$1,500.	GF
Open End Management Co.	8-6-8(d)	\$100 application fee plus registration fee of \$1,500	GF
Securities Exemptions			
Limited Offerings	8-6-11(c)	\$300.00	ASC
Exemption filing fee	8-6-11(14)(m)(4)	\$150.00	ASC
Expansion Filing Fee	8-6-11(9)(c) & 8-6-11(c)	\$300.00	ASC
Extension Fee - Filing Fee	8-6-11(a)(9)(c) & 8-6-11(c)	\$300.00	ASC
Sale of Checks			
Application Fee	8-7-9	\$250.00	ASC
Investigative Fee	8-7-6	\$250.00	ASC
Per Branch	8-7-9	\$5. up to max of \$250.	ASC
Industrial Revenue Bonds	8-6-115	1/20th of 1% not less than \$25 and not to exceed \$1,000	ASC
Opinions	8-6-29(b)	\$150.00	ASC
Mutual Funds			
Assets less than 25 million	8-6-11(a)(2)	\$350.00	ASC
Assets 25 million to 100 million	8-6-11(a)(2)	\$700.00	ASC
Assets greater than 100 million	8-6-11(a)(2)	\$1,200.00	ASC
Unit Investment Trusts	8-6-11(a)(2)	\$200.00	ASC
Administrative Assessment	8-6-19(j)(2)	No more than \$5,000 for each act or omission, not to exceed \$50,000 for any person	GF
Request for Information	AGO 95-226 and 98-161 - actual cost	Reproduction Costs (\$0.25 per page copying, mailing and prorated hourly employee wage for research	ASC

* General Fund (GF), Alabama Securities Commission Fund (ASC)

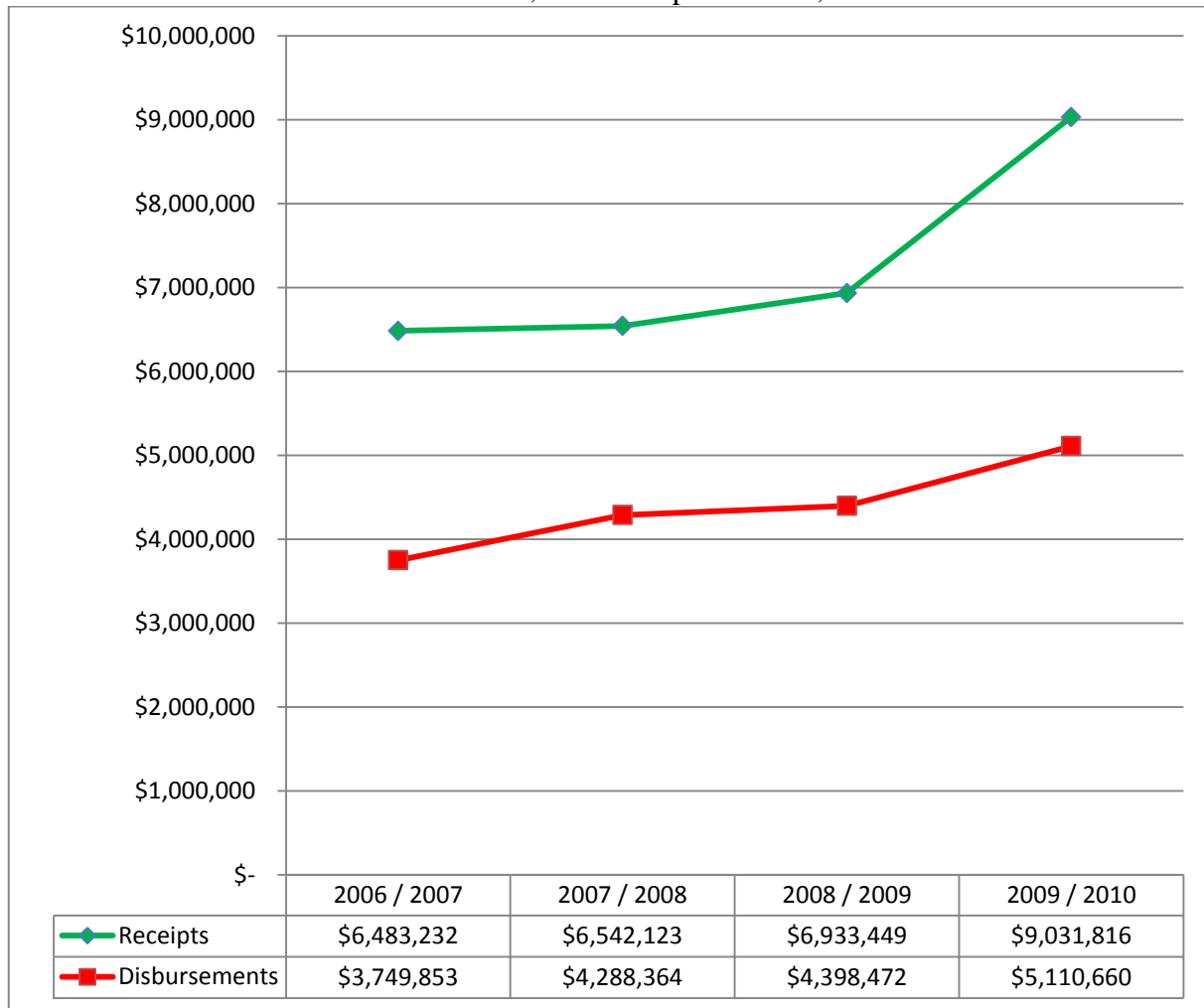
Schedule of Receipts, Disbursements, and Balances

October 1, 2006 – September 30, 2010

	<u>2010 FY</u>	<u>2009FY</u>	<u>2008FY</u>	<u>2007FY</u>
<u>Receipts</u>				
Exemption Permit Filing Fees	\$ 6,757,850.00	\$ 5,727,460.00	\$ 5,960,610.00	\$ 5,871,330.00
Sale of Checks License Fees	40,885.00	44,255.00	37,720.00	41,355.00
Business Lic Not Classified	12,115.32	16,411.00	12,634.35	26,050.00
Investment Advisor Registration Fees	586,960.00	489,120.00	475,500.00	451,450.00
Securities Comm. Investigations	1,621,720.74	650,462.21	33,238.00	69,488.00
Fees (Rules and Copies)	1,958.50	1,304.00	2,939.75	3,007.12
Filing or Recording Fees	900.00	1,350.00	900.00	2,850.00
Insurance Recoveries	5,521.06	1,389.50	2,131.41	13,047.50
Reimbursement Not Classified	475.36	-	-	156.00
Prior Year Refund	-	752.00	415.00	1,700.00
Salvage/Recycling	3,430.00	945.16	16,034.06	2,325.00
Abandoned Property	-	-	-	473.79
Total	9,031,815.98	6,933,448.87	6,542,122.57	6,483,232.41
<u>Disbursements</u>				
Personnel Costs	2,736,967.85	2,636,713.32	2,519,109.79	2,184,550.84
Employee Benefits	919,748.36	876,246.85	812,845.79	684,871.75
In-State Travel	38,791.05	38,774.63	30,762.99	28,367.51
Out-of-State Travel	40,126.58	44,172.96	48,122.11	34,120.76
Repairs and Maintenance	13,932.59	2,624.32	1,807.53	2,415.53
Rentals and Leases	662,795.07	373,251.51	375,020.83	345,364.39
Utilities and Communication	42,880.36	44,021.82	44,895.95	43,227.66
Professional Services	276,109.33	187,292.00	117,073.25	165,706.64
Supplies, Materials, and Operating Expenses	178,388.36	121,372.15	129,643.77	145,546.25
Transportation Equipment Operation	53,979.45	34,848.42	54,492.46	40,042.80
Transportation Equipment Purchases	120,729.00	-	103,276.00	35,871.00
Other Equipment Purchased	26,211.56	39,154.37	51,313.68	39,767.83
Transfers to General Fund*	4,000,000.00	1,500,000.00	2,500,000.00	1,500,000.00
Total	9,110,659.56	5,898,472.35	6,788,364.15	5,249,852.96
Excess (Deficiency) of Receipts over Disbursements	(78,843.58)	1,034,976.52	(246,241.58)	1,233,379.45
Cash Balances at Beginning of Year	11,472,622.52	10,437,646.00	10,683,887.58	9,450,508.13
Cash Balances at End of Year	11,393,778.94	11,472,622.52	10,437,646.00	10,683,887.58
Reserved for Unpaid Obligations	(254,060.16)	(307,868.70)	(155,152.55)	(212,580.80)
Unreserved Cash Balances at end of Year	\$ 11,139,718.78	\$ 11,164,753.82	\$ 10,282,493.45	\$ 10,471,306.78
* Appropriation Acts 2006-335; 2007-282; 2008-466 and 2009-550 required the transfer of \$1,500,000 in 2007, \$2,500,000 in 2008, \$1,500,000 2009 and \$4,000,000 in 2010 respectively				

Operating Receipts vs. Operating Disbursements

October 1, 2006 – September 30, 2010 *



*Does not include transfers to the General Fund.

QUESTIONNAIRES

Commission Member Questionnaire

Of 7 letters sent, 2 participated in the survey.

- 1. What are the most significant issues currently facing the Alabama Securities Commission and how is the Commission addressing these issues?**

Respondent 1 There seems to have been an upturn in attempts to defraud people during hard times, when investors are looking for better returns. The Commission continues its nationally known strong enforcement actions against intentional wrongdoers. The scope of state investment advisor regulation was expanded by federal financial reform. I believe we are geared up for that responsibility, but Director Joe Borg can give you a more accurate assessment as of today.

Respondent 2 Consistent response to Consumer and Business complaints requiring investigation particularly if violation of securities laws or fraud are alleged

- 2. What changes to the Alabama Securities Commission's laws are needed?**

Respondent 1 None that I am aware of.

Respondent 2 None that I am aware of

- 3. Is the Alabama Securities Commission adequately funded?**

Yes	2	100.0%
No	0	0.0%
Unknown	0	0.0%
No Opinion	0	0.0%

- 4. Does the Alabama Securities Commission receive regular reports on the operations of the commission from the chief administrative officer?**

Yes	2	100.0%
No	0	0.0%
Unknown	0	0.0%
No Opinion	0	0.0%

- 5. Is the Alabama Securities Commission adequately staffed?**

Yes	1	50.0%
No	1	50.0%
Unknown	0	0.0%
No Opinion	0	0.0%

6. Has the Alabama Securities Commission experienced any significant changes to its operations?

Yes	2	100.0%
No	0	0.0%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 1 Financial reform at federal level increased the scope of regulation of investment advisors.

Respondent 2 Undertaking some larger enterprises for oversight as passed down from Feds. Staffing I believe approved but not sure acquired at this time.

7. Does the Alabama Securities Commission plan any significant changes in its operations?

Yes	1	50.0%
No	1	50.0%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 2 As above in number 6

Broker / Dealer Firm Licensees

Of 100 letters sent, 41 participated in the survey, and 59 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

Yes	28	68.3%
No	7	17.1%
Unknown	1	2.4%
No Opinion	5	12.2%

Respondent 9 We are already federally regulated by a number of entities including FINRA and the SEC. As a bank affiliated broker dealer we are also reviewed in part by the OCC and the Fed.

Respondent 12 Yes, but often duplicative of federal securities laws and FINRA regulation. You should focus on matters not already covered by others.

Respondent 28 Federal level is more effective.

Respondent 34 I think investor' welfare is best served by regulatory oversight, but I don't think it needs to be multilayered. Since BDs are also regulated by FINRA, I don't think additional complex regulation by State Agencies is efficient.

Respondent 35 We are already regulated by the SEC, FINRA and 15 stock exchanges. The states need to determine if the brokers should be licensed in their states but do not need to regulate anything more than that.

2. Do you think any of the Alabama Securities Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	3	7.3%
No	15	36.6%
Unknown	12	29.3%
No Opinion	11	26.8%

Respondent 12 Securities agent registration in AL should be automatic for those registered with FINRA. Don't duplicate review effort of other regulators.

Respondent 28 Those that duplicate federal regulation

Respondent 34 I doubt that any laws or rules in place were crafted with the intent to place inappropriate restrictions, however it is easier to create regulation to specifically curb bad behavior that has been perpetrated by a small minority of bad sheep that will always find a way to defraud or steal because they are bad apples, not because the existing rules are too lenient.

Respondent 35 I have not come across any issue with the Alabama laws or rules at this point.

3. Do you think any of the Alabama Securities Commissions requirements are irrelevant to the competent practice of your profession?

Yes	4	9.8%
No	18	43.9%
Unknown	12	29.3%
No Opinion	7	17.1%

Respondent 12 But see comment on #2

Respondent 28 Those that duplicate federal regulation

Respondent 34 I don't imagine that State specific requirements are terribly unique and are likely already addressed by general Federal regulations and by FINRA rules and regs.

Respondent 40 Having previously worked at the SEC in Washington, D.C., I personally understand the role performed by the state in protecting customers.

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Securities Commission positions, policies, rules, and laws?

Yes	20	48.8%
No	8	19.5%
Unknown	3	7.3%
No Opinion	10	24.4%

Respondent 28 No centralized repository for notices from states.

Respondent 33 To the best of our knowledge, yes.

Respondent 35 Absent trying to review the laws passed by each state it is virtually impossible to remain informed as to changes absent information being provided to the broker dealer community in the form of an email or mailing. We pay the states to be registered they should provide information if requirements change.

5. Has the Alabama Securities Commission performed your licensing and renewal in a timely manner?

Yes	33	80.5%
No	0	0.0%
Unknown	2	4.9%
No Opinion	6	14.6%

Respondent 33 To the best of our knowledge, yes.

Respondent 17 Through FINRA CRD

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Securities Commission doing to address the issue(s)?

Respondent 5 A lack of confidence in the profession by the investing public. All securities commissions are working with broker/dealers and the public to ensure that the public can again place their trust in the industry.

Respondent 8 Informing and protecting the public regarding investing.

Respondent 9 I believe the overall cost of complying with the various regulatory agencies is increasing the cost to conduct business in general and that cost is passed on to the consumer.

Respondent 10 none

Respondent 11 Unsuitable investing recommendations, especially to older individuals.

Respondent 15 Don't know

Respondent 16 N/A

Respondent 21 New Federal and SRO regulation

Respondent 26 No opinion.

Respondent 28 Being addressed at the federal level

Respondent 30 As a California based firm, we have some brokers licensed in Alabama. However, our business in the state is not extensive.

Respondent 31 n/a

Respondent 33 We are unaware of anything specific to Alabama at this time.

Respondent 35 N/A

Respondent 40 Clients who unwittingly allow their financial advisor unfettered access to their assets and securities. Such FAs will also suppress client statements, etc.

No response – 26

7. Do you think the Alabama Securities Commission and its staff are satisfactorily performing their duties?

Yes	28	68.3%
No	0	0.0%
Unknown	4	9.8%
No Opinion	9	22.0%

Respondent 30 We handle all the registration of the Firm's brokers in Alabama through WebCRD. As a member of the Compliance Department I have had occasion to phone and get clarification on certain issues and have been very pleased with the service I have received.

Respondent 33 To the best of our knowledge, yes.

8. Has any member of the Alabama Securities Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	1	2.4%
No	38	92.7%
Unknown	0	0.0%
No Opinion	2	4.9%

Respondent 9 These are my personal opinions and not those of my firm.

Respondent 33 To the best of our knowledge, no.

Broker / Dealer Agent Licensees

Of 100 letters sent, 14 participated in the survey, 24 letters were returned as “undeliverable”, and 63 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

Yes	12	85.7%
No	0	0.0%
Unknown	1	7.1%
No Opinion	1	7.1%

Respondent 3 I have a nonresident license in AL and am really not that familiar with the Alabama Securities Commission

2. Do you think any of the Alabama Securities Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	0	0.0%
No	9	64.3%
Unknown	3	21.4%
No Opinion	2	14.3%

Respondent 3 I have a nonresident license in AL and am really not that familiar with the Alabama Securities Commission

3. Do you think any of the Alabama Securities Commissions requirements are irrelevant to the competent practice of your profession?

Yes	1	7.1%
No	8	57.1%
Unknown	5	35.7%
No Opinion	0	0.0%

Respondent 3 I have a nonresident license in AL and am really not that familiar with the Alabama Securities Commission

Respondent 5 I'm sure some are...but most are not irrelevant.

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Securities Commission positions, policies, rules, and laws?

Yes	4	28.6%
No	4	28.6%
Unknown	3	21.4%
No Opinion	3	21.4%

Respondent 1 I do not remember any notices.

Respondent 3 I have a nonresident license in AL and am really not that familiar with the Alabama Securities Commission

Respondent 5 Through my employer.

5. Has the Alabama Securities Commission performed your licensing and renewal in a timely manner?

Yes	11	78.6%
No	0	0.0%
Unknown	2	14.3%
No Opinion	1	7.1%

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Securities Commission doing to address the issue(s)?

Respondent 1 Continued trust of the public and our employees in the financial system. Continued enforcement, audits and prosecution.

Respondent 2 Unknown

Respondent 3 I have a nonresident license in AL and am really not that familiar with the Alabama Securities Commission

Respondent 4 unknown

Respondent 5 Protecting the citizens of AL from advisors or those pretending to be advisors that make or recommend fraudulent investments or give poor to terrible advice.

Respondent 6 fees and commissions that brokers charge or get compensated on.

Respondent 11 The onerous rules created by FINRA and how those rules are integrated with State laws and SEC rules.

Respondent 14 no current issues

No response – 6

7. Do you think the Alabama Securities Commission and its staff are satisfactorily performing their duties?

Yes	4	28.6%
No	0	0.0%
Unknown	7	50.0%
No Opinion	3	21.4%

8. Has any member of the Alabama Securities Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	0	0.0%
No	14	100.0%
Unknown	0	0.0%
No Opinion	0	0.0%

Restricted Agent Licensees

Of 100 letters sent, 42 participated in the survey, 3 letters were returned as “undeliverable”, and 55 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

Yes	20	47.6%
No	12	28.6%
Unknown	4	9.5%
No Opinion	6	14.3%

Respondent 2 Not at the same level that a securities broker. I work for a charitable organization, and only issue charitable gift annuities.

Respondent 9 I appreciate your protection of the citizens of Alabama and am glad to comply with all the regulations. It is, perhaps, the toughest of the states where we offer CGAs. We are a solid organization so it is a little unnecessary but we are happy to comply as your require because there may be many organizations not worthy to offer CGAs.

Respondent 18 if I understood the role of the commission I could answer this question

Respondent 20 The bigger question is how much regulation is enough.

Respondent 21 I normally detest regulation. Unfortunately, when dealing with financial instruments incorporated with the emotional pull of charity, it could make room for miss dealings.

Respondent 25 We are a NY state charity offering charitable gift annuities. NY state law requires us to set aside reserves and pledge the assist of the University to ensure every annuity contract is honored regardless of state residency of the donor

Respondent 28 Sales or limited to members of the church the issuer is associated with.

Respondent 30 We are registered to provide Charitable Gift Annuities in all States but Hawaii; Alabama is the only state that requires a Securities license.

Respondent 31 I am an employee of a national charity and am licensed in Alabama order to be able to offer charitable gift annuities issued by my employer. Our organization is registered/qualified to issue gift annuities in many states, and Alabama is the only one in which regulation is by the Securities Commission as opposed to the Department of Insurance. The Philanthropy Protection Act of 1995 exempts charities from registering gift annuities with the Securities and Exchange Commission or registering the charity under any of the Securities Acts. The Philanthropy Protection Act does not provide an exemption from the antifraud provisions, so charities must provide donors the material information they need to make an informed decision whether to establish a gift annuity. Furthermore, the Philanthropy Protection Act exemptions are available only if solicitors receive no commissions, eliminating what

otherwise might be an incentive to coercion. If the Alabama Securities Commission is actually doing a criminal background check on restricted agents, then, arguably, that would give an added measure of protection, but it's more important, if there is to be any regulation, to monitor the financial stability of the issuing charity. The charity for which I work is a New York charity and is subject to stringent regulation by the Department of Insurance. In the other states in which we issue gift annuities, regulation, if any, is by the Insurance Department. That makes more sense, considering that commercial annuities ordinarily are regulated by a state's insurance department. In New York, we file comprehensive information about all of our gift annuities and about the financial health of the organization. New Jersey accepts our New York filing in lieu of New Jersey's annual report. Regulatory compliance is costly and time-consuming and puts a strain on strapped charities. It would be great if Alabama would dispense with the agent licensing requirement and accept the New York report to meet any Alabama annual filing requirement.

2. Do you think any of the Alabama Securities Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	12	28.6%
No	19	45.2%
Unknown	3	7.1%
No Opinion	8	19.0%

Respondent 9 See comments above.

Respondent 18 just wish all the states asked for the same information in the same format

Respondent 25 see above

Respondent 31 Other states do not require it. If the licensing requirement is retained, a new, much shorter form should be designed that addresses only the pertinent questions. The Form U-4 is overkill for nonprofit employees whose only role as a "securities sales agent" is to offer charitable gift annuities. The contracts are pretty standardized and most charities use the rates set forth by the American Council of Gift Annuities, so there isn't a lot of room for the kind of creativity that would inspire fraudulent or criminal activity. Infrequent abuses that have been reported in the press have been at the level of management and usually involve misapplication of the proceeds.

Respondent 36 The blanket prohibition of the use of testimonials and hypothetical examples with regard to gift annuities is unnecessary. Testimonials and examples can be informative to readers and can be responsibly done if accompanied by an appropriate disclaimer.

3. Do you think any of the Alabama Securities Commissions requirements are irrelevant to the competent practice of your profession?

Yes	10	24.4%
No	14	34.1%
Unknown	7	17.1%
No Opinion	10	24.4%
No response	1	

Respondent 9 However the real issue, it seems to me, is the strength and integrity of the organization rather than an individual associated with the organization.

Respondent 18 see answer to question 1

Respondent 21 Not for the competency angle. I think that all non-profits should be required to tell anyone considering a planned gift should be required to suggest that the donor discuss with family members and tax advisers.

Respondent 33 As a representative of a nonprofit, I must be licensed to promote charitable gift annuities. There are many irrelevant parts (related to financial brokers) of the initial application for this type of license.

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Securities Commission positions, policies, rules, and laws?

Yes	22	52.4%
No	6	14.3%
Unknown	7	16.7%
No Opinion	7	16.7%

Respondent 9 Since I renew annually I become "self-informed" of the regulations for compliance.

Respondent 18 must go to third parties to find out current requirements - web site is difficult to navigate

Respondent 30 Our Legal Department takes care of these matters

5. Has the Alabama Securities Commission performed your licensing and renewal in a timely manner?

Yes	40	95.2%
No	1	2.4%
Unknown	1	2.4%
No Opinion	0	0.0%

Respondent 6 Everyone was very kind when I called, but the renewal notices did not go out until well past when they were due.

Respondent 31 With one exception. We are the national umbrella organization for member charities around the US. We offer our gift annuity program to our members that don't have enough staff to commit to managing their own gift annuity programs or would not have enough annuitants over which to spread the mortality risk. Ordinarily, we work through development officers of our member organizations. Those development officers have the relationship with the donor. We help structure an appropriate gift annuity product for the donor, we prepare all of the documentation, and we manage the program. In Alabama, we could not get the development officer at the local charity registered as a restricted agent, because the development officer is not our employee. If that development officer gets an inquiry from a donor about gift annuities, the development officer puts us in touch directly with the donor. The development officer is the person that has the ongoing relationship with the donor, yet we must exclude the development officer from the process. It doesn't make sense.

Respondent 35 Always - and it's appreciated.

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Securities Commission doing to address the issue(s)?

Respondent 1 I work for a charity that issues Charitable Gift Annuities to individuals who wish to support my university and also receive payments for the rest of their lives. It is my understanding that we are regulated in the same ways that for-profit investment companies and insurance companies are. There does not seem to be an understanding that charities do not issue Charitable Gift Annuities as investment opportunities or a way for their "clients" to make money. The mission of charities is to support their charitable mission - not to increase the personal wealth or investment holdings of their donors.

Respondent 2 My interaction with the Securities Commission is a small slice of my profession, and I'm not aware of any issues of significance that impact this facet of my work.

Respondent 6 currently no issues

Respondent 9 I am unaware of any significant issues.

Respondent 10 none

Respondent 13 N/A

Respondent 19 No issues with the State of Alabama on CGAs.

Respondent 20 Don't have any issues that I'm aware of.

Respondent 21 I don't think we have any problems facing us other than the dragging and uncertain economy.

Respondent 23 No comment - We issue charitable gift annuities and only have five donors in the state of AL

Respondent 27 I can't think of any significant issues which would require oversight by the Alabama Securities Commission. There are a number of significant issues which need to be addressed within our profession but they relate to the knowledge and competency of individuals. I do not think the Alabama Securities Commission should be involved in the areas of knowledge and competency.

Respondent 28 No opinion

Respondent 30 I don't think Charitable Gift Annuities should be regulated as they currently are

Respondent 32 I do not know. Your question assumes I know every issue and can determine most significant ones

Respondent 33 Unknown

Respondent 35 No issues currently

Respondent 36 Unsure

Respondent 37 nc

Respondent 38 reporting

Respondent 39 Since we are a S.C. corporation I have no opinion on this question.

Respondent 40 None

No Response - 21

7. Do you think the Alabama Securities Commission and its staff are satisfactorily performing their duties?

Yes	19	45.2%
No	0	0.0%
Unknown	18	42.9%
No Opinion	5	11.9%

Respondent 25 No interaction beyond CGA registration renewal

Respondent 31 They are very considerate and responsive, but not very flexible policy-wise. I don't think they fully understand gift annuity products or the methods by which they are traditionally offered by charities.

Respondent 32 An extern is not in a position to do a performance assessment overall. I am satisfied with their serving my organization and me.

8. Has any member of the Alabama Securities Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	1	2.4%
No	38	90.5%
Unknown	3	7.1%
No Opinion	0	0.0%

Respondent 6 Among the various State Securities Commission staff that I have communicated with in the past, Alabama had some of the best people....and, in my opinion, by a mile.

Respondent 30 Again, our Legal Department handles all interactions. I doubt they would tolerate any fees that were out of the ordinary.

Investment Advisor Firm Licensees

Of 100 letters sent, 54 participated in the survey, 1 letter was returned as “undeliverable”, and 45 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

Yes	46	86.8%
No	4	7.5%
Unknown	2	3.8%
No Opinion	1	1.9%

Respondent 1 I think they need to spend more time on the larger investment advisor firms.

Respondent 6 Regulation should be tailored to those folks who represent the greatest risk.

Respondent 9 It seems redundant that investment advisors would be regulated separately by each state.

Respondent 13 It is nice to be able to tell a prospect or client that I am registered with the Alabama Securities Commission

Respondent 28 Focusing on firms not otherwise registered with the SEC.

Respondent 32 It seems to me that most states mirror FINRA and SEC rules and regs. I have never really understood why the states deem it necessary to have separate rules. FINRA's rules are exhaustive and in my opinion if enforced should be all that is necessary.

Respondent 34 Vast majority of those registered are honest & the few dishonest will work their "smoke 'n mirrors" methods so "complicatedly" they'll be nearly impossible to catch without a huge staff spending lots of investigative time & effort following the "big money operators" who spend equal amounts of time & effort eluding the investigators.

Respondent 36 The ASC has caught some bad guys who were hurting people.

Respondent 38 Unfortunately, the vast majority of honest advisors pay the price for the dishonest few.

Respondent 52 We have so few Alabama clients and our entire practice is subject to SEC oversight already

No response – 1

2. Do you think any of the Alabama Securities Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	15	28.8%
No	26	50.0%
Unknown	5	9.6%
No Opinion	6	11.5%
No response	2	

Respondent 6 There should be regulations appropriate to the risk. Small advisors using custodians should be monitored differently than large advisors who directly handle client's money.

Respondent 11 Difficult for small advisor to follow the same rules as, say a brokerage house Sun,

Respondent 14 Unclear on exactly what is required/to meet requirements everything is trial an error

Respondent 17 By not having a de minimis rule the State of Alabama's policies are over burdensome to both the State and the professional.

Respondent 21 Only the audited financial statement requirement. See question 3.

Respondent 22 The name of my firm is [REDACTED] [REDACTED] [REDACTED] [REDACTED]. I am a licensed Certified Financial Planner. Two inspections ago an ASC auditor issued a ruling that I could no longer say that I was engaged in the practice of financial planning since the majority of my practice dealt with investment management.

Respondent 28 We are notice-filed through SEC registration.

Respondent 29 Requirement for Annual Audited financial statement. The corporations that we run our business out of typically have very few assets, so we are basically paying an inordinate fee to a CPA to audit our checking account each year. Several thousand dollars could be spent much wiser. The requirement for a bond is equally restrictive. They have become very hard to get and a recent quote was for \$1750 for a \$50,000 surety bond. These 2 requirements cost each of us in excess of \$5,000 a year. It would make more sense for the commission to establish their own fund for the \$50000 bond and do away with the audit requirement.

Respondent 32 Not any more so than FINRA's.

Respondent 34 Some rules & policies penalize small honest advisors unable to pay specialists to keep records/files that larger advisors can.

Respondent 35 Over time different types of firms have developed that while governed by ASC do not really operate in the traditional model that ASC was set up to regulate. An example is a firm like mine that provides financial planning and investment advice on a project or hourly

basis, but does not manage investments therefore compensation is similar to a CPA or attorney. However, I am subject to same regulations, policies and practices as a money manager who has discretionary management over \$100million. This not only causes an increase in time spent on compliance that is irrelevant to my practice and clients it acts as a barrier to other firms entering the marketplace which limits the choices and options of consumers.

Respondent 36 Yes. The minimum capital requirement. The annual balance sheet audit.

Respondent 38 I gripe about the hassle of being regulated, but it has improved our practice.

3. Do you think any of the Alabama Securities Commissions requirements are irrelevant to the competent practice of your profession?

Yes	13	24.1%
No	29	53.7%
Unknown	8	14.8%
No Opinion	4	7.4%

Respondent 6 Requiring paper records when the advisor has electronic copies of correspondence is wasteful.

Respondent 15 Some of the rules just don't apply to a small advisor

Respondent 20 I have not given this adequate consideration

Respondent 21 I do not think that the requirement of audited financial statements is entirely necessary. The cost is prohibitive and could be replaced by increased bonding or other measures.

Respondent 22 Again, two inspections ago, the examiner's efforts seemed focused on making future examinations easier for the ASC. Example: Re-do the file labels in my filing cabinet.

Respondent 34 Many required records/files are irrelevant to our clients' success. Our clients' successful achievement of their objectives should be goal # 1.

Respondent 35 See comments in #2

Respondent 36 As I understand, most of the requirements reflect federal law. I do think that application of some of the requirements for an individual practitioner to have procedures manuals to a level of a big firm are unnecessary. I also see the \$10,000 capital requirement to be of no protection to the consumer.

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Securities Commission positions, policies, rules, and laws?

Yes	29	53.7%
No	16	29.6%
Unknown	4	7.4%
No Opinion	5	9.3%

Respondent 4 I think - but I'm not sure. I do not receive any emails that were intended to alert me to any changes in rules, policies or laws. If they are relevant maybe a blast linking us to the update could be beneficial.

Respondent 7 I receive little if any correspondence when a change is made

Respondent 18 Still a bit confusing.

Respondent 22 There are no regular communications between the ASC and me. I learn of changes only through proactive letters and email. Emails often go unanswered.

Respondent 28 To our knowledge.

Respondent 32 We've never received any notices of changes.

Respondent 35 Based on discussions with other practitioners with practices similar to mine one problem is that during the review or audit process there can be different interpretations of ASC positions and policies from one examiner to another.

Respondent 38 I don't want to be inundated with bulletins of legal jargon. I prefer the current method

5. Has the Alabama Securities Commission performed your licensing and renewal in a timely manner?

Yes	45	83.3%
No	5	9.3%
Unknown	2	3.7%
No Opinion	2	3.7%

Respondent 1 we renew through FINRA

Respondent 6 Licensing is done by FINRA. Their website is a joke. Annual licensing and the annual updating amendment is a horror show.

Respondent 7 When my business applied for registration as an RIA, the length of time until completion was about six months. This was much longer than any state with which I registered. The reasons seemed unjustified.

Respondent 17 It took longer than 6 months before we were able to satisfy the Commission in Alabama. The time lag and demand for changes to our policies was to long and very invasive.

Respondent 22 I renew through FINRA. The ASC accesses the information I post there. I have no direct communication from the ASC regarding renewal.

Respondent 28 We are notice-filed through SEC registration.

Respondent 35 Numerous times I have submitted documents for review and approval only to not receive a response or to receive a contradictory response from what had earlier had been given. Also responses from audits typically take at least 3 months and then they expect my firm to respond to them within a 14 day timeframe, which when you have a small firm without a compliance department can place an undue hardship on the operation of the firm.

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Securities Commission doing to address the issue(s)?

Respondent 1 No opinion.

Respondent 3 No comment.

Respondent 4 We are struggling to maintain our businesses because the market took 20-40% of our revenue away from us (through no fault of our own). People are too scared to make a move even if they are unhappy with brokers; we are just now seeing them come out of their fox holes. I think (for me anyway) the ASC waived the audited BS two years in a row for me ant that was a huge help.

Respondent 6 Compliance. The Commission should be lobbying FINRA to regulate advisors appropriate to the risk they represent to investors.

Respondent 7 to establish a uniform fiduciary standard that applies to both broker-dealers and investment advisers; I am uncertain what is being done about this issue

Respondent 10 N/A

Respondent 14 Advisors who attempt to sell unlicensed securities; the distinction between a stock broker (transaction based) and an Investment Advisor (fee based) is blurred to the public; insurance agents being allowed to market their practice as Wealth, Retirement, Financial Advisors, etc.

Respondent 15 I do not know.

Respondent 16 In my opinion, there is a problem of non-disclosure of fees and I would like to see regulations requiring a full disclosure of all fees charged. The disclosure requirement should apply to all firms, SEC and Alabama.

Respondent 17 There are two issues I can think of. 1. The change in who will be registered by the State and who will be SEC registered. This will put a huge burden on Alabama. 2. The incompetent personal the Commission employees. Between the large number of professionals

who will be trying to register with the State and your employees, it will be a nightmare. When your employees can't do simple math, it reflects very poorly on the Commission. And doesn't generate much willingness on the professionals side to make other changes requested by the Commission.

Respondent 18 Uncertainty over further regulation.

Respondent 20 Unethical and fraudulent practices that harm the public perception of the profession. Alabama has had a history of pursuing public complaints and removing unethical individuals from the profession

Respondent 21 a. Fraudulent and un-registered advisors
b. Working 24/7 to protect the citizens of Alabama

Respondent 22 Fraudulent financial planners. I don't know the extent to which the ASC addresses this problem. It often seems that they concentrate on those of us who are doing our best to uphold professional standards and protect clients.

Respondent 23 Those who would intentionally take advantage of unsuspecting clients. I believe Mr. Borg and his staff is trying to weed out these types as fast as they can be identified.

Respondent 24 none

Respondent 25 Disparity of securities legislation among states. More uniformity and consistency is always helpful.

Respondent 28 No Opinion

Respondent 30 Psychological effects of an elongated recession on the high net worth client

Respondent 31 unlicensed persons selling fraudulent investments

Respondent 32 The DOL forcing the fiduciary standard (whatever that might be) and making all reps. go fee based. It will harm the customer in the long run by costing them more to work with a rep. Many customers will forego working with a rep and that will harm them. I could go on and on but I believe what the DOL is proposing will in the long run ruin people's retirement funding and their retirement in general.

Obviously, this is not an Alabama State specific problem it is a national problem.

Respondent 34 Getting rid of the few unscrupulous "bad apples". The Commission seems to be doing a good job of this.

Respondent 35 Helping consumers understand the differences between suitability and fiduciary as they relate to the different types of financial services professionals.

Respondent 36 I think the ASC generally does a good job. I think the main issues of the ASC is to protect consumers and catch crooks. It seems to me that it does this well.

Respondent 37 Education of the public about products being sold. Most of the common public do not know that they are being told only part of the story in many instances when it comes to certain products in our industry. I do not know what the ASC is doing to address the issue.

Respondent 38 The complexity of the regulatory structure and process. The ASC has been fair in taking the time to explain these matters when they are in our office

Respondent 43 I am new to the business, and do not have an informed opinion yet on this matter.

Respondent 46 No opinion.

Respondent 48 Fraudulent investment advisors preying on the public. I think Alabama's system of audits and investigations is very good at stopping these guys.

Respondent 49 Regulation and compliance

Respondent 50 The main issue i have in my practice is the licensing requirements for each state. I see no reason why beyond the "de minimus" rules if I am licensed in one state there has to be such a long wait to get licensed in another. It should be if you are licensed and in good standing in one state, then that should be enough for another state. I can understand paying a fee to get licensed in a state, but to have to wait 6 months if you have more than five clients is hard to do. I run an hourly practice, and take no aum and have a hard time thinking about how i can grow my business outside Alabama. The licensing requirement for each state is the most restricting issue i face going forward from growing my practice. If this doesn't change it may put me out of business.

Respondent 51 Sales of inappropriate products

Respondent 52 Co-ordination with SEC rules and regulations to avoid over burdening compliance

Respondent 53 pending filings as a result of new federal & SEC regulations.

Respondent 55 Require the same fiduciary standards of stock brokers as is expected of RDA(s).

No response – 18

7. Do you think the Alabama Securities Commission and its staff are satisfactorily performing their duties?

Yes	41	75.9%
No	3	5.6%
Unknown	4	7.4%
No Opinion	6	11.1%

Respondent 4 As far as I have been exposed to ASC the people I have spoken with have been extremely helpful and responsive to my needs.

Respondent 6 Bobby Sharp and Spencer Lee have helped me a lot with compliance and rules. Great guys.

Respondent 7 but not in all cases, as with my registration

Respondent 13 The rep that has been assigned to me has been very helpful and is always willing to answer a question

Respondent 17 The securities analyst who performed our registration review was incompetent. She was unable to perform simple math when comparing our contract to our ADV Part II. When also demanding other changes be made to our contract or other items, she was unable to comprehend many of the nuances of the English language. This became a huge source of frustration and friction. Some of which I admit I created because I had been pushed far enough and would not back down. This situation also increased our expenses because we sought legal counsel to help determine what are legal rights were.

Respondent 22 There is one ASC staff member who is truly outstanding-Spencer Lee. Another, who I understand is no longer auditing investment advisors, was wholly inadequate. In another instance I attempted to communicate with a staff person regarding the new SEC ADV Form 2 requirements last November, and have yet to receive a response to my inquiry.

Respondent 29 For the most part.

Respondent 35 I think the Director and upper level personnel at the ASC are doing their best, however the mid to lower levels in the ASC such as analysts do not seem to have an understanding on the different practice models that are regulated under the ASC.

Respondent 38 See #8

Respondent 39 Bobby Sparks and Spencer Lee do their job professionally.

8. Has any member of the Alabama Securities Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	1	1.9%
No	53	98.1%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 4 Absolutely not!

Respondent 21 They are always very professional.

Respondent 22 Never even a hint of this from anyone.

Respondent 34 All the examiners checking me have performed their jobs in a friendly professional manner which stimulates honest thoughtful compliance on my part.

Respondent 36 Never.

Respondent 38 They have been very professional

Investment Advisor Representative Licensees

Of 100 letters sent, 33 participated in the survey, 13 letters were returned as “undeliverable”, and 54 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

Yes	29	87.9%
No	3	9.1%
Unknown	1	3.0%
No Opinion	0	0.0%

Respondent 1 FINRA and the B/D seem to be enough for me.

Respondent 7 It seems redundant that investment advisors would be regulated separately by each state.

Respondent 11 A no-brainer, really.

Respondent 14 Please note that I received two letters requesting my participation in this survey. The first was answered fully. I will complete this one with "No Opinion" so as to not duplicate my earlier responses.

Respondent 18 some people are very trust worthy and some are not.

Respondent 26 It doesn't actually protect my personal clients (I make sure of that myself), but I know many advisors out there need, shall we say, "encouragement".

2. Do you think any of the Alabama Securities Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	8	24.2%
No	19	57.6%
Unknown	4	12.1%
No Opinion	2	6.1%

Respondent 3 The requirement of an annual audited financial statement certified by a Certified Public Accountant. Such audited financial statements are not required by most other states or those required to register with the SEC. Audited statements are burdensome, costly, and unnecessary for the Commission to carry out its regulation of Investment Advisors

Respondent 17 The time and cost required to comply with annual audited financial statements and surety bond requirement.

Respondent 20 Yes. The minimum capital requirement. The annual balance sheet audit.

Respondent 21 Not allowing Advisors to charge performance fees.

Respondent 24 I am a very small advisor, the requirements of a full audited balance sheet every year is extremely costly. There should be exemptions or a more cost effective way to insure public safety.

3. Do you think any of the Alabama Securities Commissions requirements are irrelevant to the competent practice of your profession?

Yes	5	15.2%
No	19	57.6%
Unknown	6	18.2%
No Opinion	3	9.1%

Respondent 3 See answer 2

Respondent 20 As I understand, most of the requirements reflect federal law. I do think that application of some of the requirements for an individual practitioner to have procedures manuals to a level of a big firm are unnecessary. I also see the \$10,000 capital requirement to be of no protection to the consumer.

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Securities Commission positions, policies, rules, and laws?

Yes	9	27.3%
No	14	42.4%
Unknown	6	18.2%
No Opinion	4	12.1%

Respondent 4 I don't receive anything as an Advisor from ASC

Respondent 9 While I periodically view ASC web site there is not much public disclosure as would like. Would like to see a link to get email notices similarly available from FINRA and SEC.

Respondent 10 I can't remember a time in which I have received any correspondence regarding changes and interpretations.

Respondent 12 I have not received any information about changes.

Respondent 18 Our manager keeps us updated very good.

Respondent 21 Commission needs to notify Advisors of material changes to current standards such as the requirement to report net of fee performance.

Respondent 31 would like emails on changes in regulations and reporting requirements as needed

5. Has the Alabama Securities Commission performed your licensing and renewal in a timely manner?

Yes	26	78.8%
No	1	3.0%
Unknown	4	12.1%
No Opinion	2	6.1%

Respondent 9 Presume adequate as all licensing is handled by separate licensing division.

Respondent 12 My initial registration took 6 months, much longer than any other state registration

Respondent 18 This is left up to the manager

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Securities Commission doing to address the issue(s)?

Respondent 1 No opinion

Respondent 2 Consumer confusion about standards of care. I don't know if the Securities Commission can do much about it, unless there was a fiduciary standard in place. The ASC has in my opinion attempted to prevent abuse, but does not educate public enough on the need for advice to be given that is in the consumer's best interest.

Respondent 4 Already addressed under the other survey I took for the firm

Respondent 8 N/A

Respondent 9 Fraud and confidence

Respondent 10 The lack of fiduciary duty for broker-dealers, which I understand may be outside of the ASC's jurisdiction.

Respondent 12 creating a fiduciary standard for all investment advisors

Respondent 13 No issues affecting us currently.

Respondent 14 No Opinion

Respondent 16 The economy.

Respondent 20 I think the ASC generally does a good job. I think the main issue of the ASC is to protect consumers and catch crooks. It seems to me that it does this well.

Respondent 21 The Federal Government continues to blur the line between Brokers and Advisors. We want to be held to a higher standard but the vast majority of individuals do not understand the difference.

Respondent 25 I am very new to this profession (zero clients), and do not yet have years of experience to draw upon for an informed answer here.

Respondent 26 The new ADV part II. They've given me good direction on how to adapt.

Respondent 30 Regulation and compliance

Respondent 31 Communicating with the public the differences between EIA's and VA's; I'm not sure what's being done.

Respondent 33 none

No response – 16

7. Do you think the Alabama Securities Commission and its staff are satisfactorily performing their duties?

Yes	24	72.7%
No	1	3.0%
Unknown	4	12.1%
No Opinion	4	12.1%

Respondent 9 With caveat that while news releases show certain activities, I have not been involved in compliance or auditing in several years so cannot fully respond to question.

Respondent 12 not at the time of my initial registration - took 6 months

Respondent 26 The Commission staff has always been extremely professional, courteous and fair. They are first class.

8. Has any member of the Alabama Securities Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	0	0.0%
No	32	97.0%
Unknown	0	0.0%
No Opinion	1	3.0%

Respondent 20 Never.

Respondent 26 There has never been even a hint of anything like that.

Sale of Check Vendor Licensees

Of 100 letters sent, 41 participated in the survey, 10 letters were returned as “undeliverable”, and 49 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

Yes	40	97.6%
No	0	0.0%
Unknown	1	2.4%
No Opinion	0	0.0%

Respondent 3 All industries dealing with the general public's money should be regulated

Respondent 7 If not the Securities Commission, then someone needs to regulate

Respondent 21 There are too many predatory businesses that take advantage of the lower income people that use our services.

Respondent 41 Regulation that is responsible, fair, and does not put undue burden on business is necessary to protect the public welfare

2. Do you think any of the Alabama Securities Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	0	0.0%
No	37	90.2%
Unknown	2	4.9%
No Opinion	2	4.9%

Respondent 3 They are absolutely necessary; they should also address internet issues - hacking for example.

Respondent 7 No, in fact the laws, rules and policies are quite lenient.

Respondent 21 Not any that I've encountered thus far

3. Do you think any of the Alabama Securities Commissions requirements are irrelevant to the competent practice of your profession?

Yes	2	5.0%
No	31	77.5%
Unknown	4	10.0%
No Opinion	3	7.5%
No Response	1	

Respondent 28 We have no problems with laws and regulations that protect the public interest, however, the law that apparently pertains to credit counseling is not easily identifiable as such

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Securities Commission positions, policies, rules, and laws?

Yes	21	52.5%
No	5	12.5%
Unknown	9	22.5%
No Opinion	5	12.5%
No Response	1	

Respondent 3 Unfortunately, Alabama like most state websites are not the best when it comes to looking up the policies, rules and laws. Suggestion: Websites should be more user friendly and easier to navigate.

Respondent 7 The only thing I recall getting from the Securities Commission is the annual renewal notice for our license.

Respondent 9 I've not received any updates from the Alabama Securities Commission regarding any changes to and interpretation of Securities Commission positions, policies, rules, and laws.

Respondent 21 We never receive any notice of changes in the law. We do, however, receive advance notice of our license renewal time, which is nice.

Respondent 28 To date there have not been any changes made to the Sales of Checks Act since our original licensure. Any questions regarding the current Act have been answered thoroughly and timely by the Commission when asked.

Respondent 35 I would like to receive updates on any changes in the law. Maybe a quarterly newsletter could be sent.

5. Has the Alabama Securities Commission performed your licensing and renewal in a timely manner?

Yes	37	92.5%
No	1	2.5%
Unknown	0	0.0%
No Opinion	2	5.0%
No response	1	

Respondent 8 We have not been through a renewal to date.

Respondent 21 See above answer

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Securities Commission doing to address the issue(s)?

Respondent 1 N/A

Respondent 3 Keeping track of licensing, renewals and being in compliance.

Respondent 4 Most debt management companies are regulated by the Banking Department. It seems as though the state of Alabama should come up with a law regulating Debt Management companies specifically like most other states do.

Respondent 5 No significant issues.

Respondent 7 I think that Debt Settlement Companies (receiving client dollars, usually including high fees, and then keeping the money until they can settle the debts for pennies on the dollar) is the most critical issue in our industry. To my knowledge, the Securities Commission has done nothing about this issue. However, there may be other government regulatory agencies or even the Attorney General's office that has at least researched this issue.

Respondent 9 Prevalence of debt settlement firms preying on consumers and still charging up-front fees. I'm not sure what the ASC is doing to address the issue.

Respondent 10 For-profit debt settlement providers are engaging in deceptive business practices and harming unsuspecting Alabama consumers. Their activity is currently unregulated in Alabama. We urge the push for legislation to regulate this activity similar to the actions taken in Illinois (See the "IL Debt Settlement Consumer Protection Act") which was signed into law in 2010.

Respondent 12 Unlicensed activity. The Commission has done an excellent job over the years of discovering and ending unlicensed activity.

Respondent 14 Closing of bank accounts to MSB's. Nothing we are aware of.

Respondent 15 Unsure-We are a Florida corporation

Respondent 17 none

Respondent 18 Keeping the industry informed ahead of time of any significant changes in any laws pertaining to our industry.

Respondent 20 .

Respondent 21 The rates that lenders charge for "payday loans" and check cashing. Some businesses charge EXORBITANT fees for everything. There are large risks in the profession that need to be compensated, but there need to be limits and oversight.

Respondent 25 The most significant issue facing licensed money transmitters in Alabama is unfair competition from unlicensed money transmitters.

Respondent 26 The most significant issue facing my profession is competition from businesses with unscrupulous practices. By simply requiring licensure of our business, the ASC shows its commitment to eliminating unfair practices across the profession.

Respondent 27 None noted.

Respondent 28 Regulation that restricts the misrepresentation of debt settlement companies needs to be addressed, then implemented to help and protect the consumers in your state. We are unaware of any steps that the Alabama Securities Commission is doing to address this issue.

Respondent 31 Understanding stored value cards and their functionality.

Respondent 33 How to enforce regulations and pursue unlicensed entities doing business in the state.

Respondent 35 None

Respondent 36 Unscrupulous and unlicensed debt management organizations, including debt settlement companies that fail to operate in the best interest of consumers, charge high upfront fees, and may cause more harm than benefit to a consumer's credit.

Respondent 38 Assistance with designing effective procedures to mitigate check fraud and money laundering

Respondent 39 None at the time

Respondent 40 No Opinion

No Response – 16

7. Do you think the Alabama Securities Commission and its staff are satisfactorily performing their duties?

Yes	33	82.5%
No	1	2.5%
Unknown	3	7.5%
No Opinion	3	7.5%
No Response	1	

Respondent 10 Our organization is licensed and/or registered in every state, as required. The Alabama Securities Commission staff is a pleasure to deal with!

Respondent 21 I have had very little interaction with the Securities Commission, other than to get my license.

Respondent 34 During the initial licensing process, the examiner assigned to our client was helpful, informative, and promptly responded to any questions we had.

8. Has any member of the Alabama Securities Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	0	0.0%
No	39	95.1%
Unknown	1	2.4%
No Opinion	1	2.4%

Complainant Questionnaire

Of 100 letters sent, 16 participated in the survey, 9 were returned as undeliverable and 75 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Was your complaint filed with the Alabama Securities Commission by:

Mail	0	0.0%
Phone	8	50.0%
Fax	2	12.5%
Other	3	18.8%
Unknown	3	18.8%

2. Was receipt of your complaint promptly acknowledged?

Yes	13	81.3%
No	1	6.3%
Unknown	2	12.5%

3. If the answer to question 2 was yes, how long after you filed your complaint were you contacted by the Alabama Securities Commission?

Immediately	4	28.6%
Within 10 days	3	21.4%
Within 20 days	0	0.0%
Within 30 days	1	7.1%
More than 30 days	4	28.6%
Did not respond	0	0.0%
Unknown	2	14.3%
No response	2	

4. Was the employee who responded to your complaint knowledgeable and courteous?

Knowledgeable	1	6.3%
Courteous	1	6.3%
Both	12	75.0%
Neither	1	6.3%
Unknown	1	6.3%

5. Did the Alabama Securities Commission communicate the results of investigating your complaint to you?

Yes	13	81.3%
No	2	12.5%
Unknown	1	6.3%

6. Do you think the Alabama Securities Commission did everything it could to resolve your complaint?

Yes	7	43.8%
No	6	37.5%
Unknown	3	18.8%

Respondent 1 I don't know what steps were taken. From what I was told by the representatives/investigator, the companies responsible (Over The Road) closed shop & skipped out, but that some arrests were made.

Respondent 3 I would have liked to be able to recover my money (\$52,000.00).

Respondent 5 I don't believe that I filed a complaint

Respondent 9 We did much of the legwork and preparatory paperwork prior to and during the "investigation" into our complaint. It dragged on for over a year with minimal response to our inquiries as to how it was progressing; We left numerous phone requests and made a trip to Montgomery eight months into the investigation to attempt to find out the progress. At the meeting in Montgomery, which included Joe Borg, a ranking representative from the Alabama Insurance Commission and the supervisor of our assigned agent, [REDACTED] [REDACTED] we were told investigative jurisdiction had yet to be determined. In our combined fifty-five years of law enforcement investigative experience, we had never heard of any instance in which it took such an extraordinary amount of time to even determine which agency was responsible for enforcement. After more than a year and multiple requests for the investigative status, we were told that based on the findings of the S.E.C., which we had also contacted, and had been told by them at the initiation of our complaint, they lacked manpower to investigate as they didn't have resources to investigate "small" complaints, that the A.S.C. was taking no action in regards to our complaint. I would add that this is the same S.E.C. that after numerous complaints was unable to substantiate fraudulent actions by [REDACTED] [REDACTED].

Respondent 13 I do not feel that the issue was resolved in a reasonable and equitable manner. I think the individual got away with fraud. I was never compensated for my damages. A charge back should have been held against the individual's property to recover the money I had invested.

Respondent 14 A first class operation rare in government.

Respondent 15 They did nothing that I know of

Respondent 16 I lost \$3000 to a scumbag con artist and they told me that this was the best they could do

7. Were you satisfied with your dealings with the Alabama Securities Commission?

Yes	9	56.3%
No	6	37.5%
Unknown	1	6.3%

Respondent 1 Actually very little dealings with the Commission, other than the representative who visited. I wasn't satisfied with the outcome, in that I lost my entire investment (\$15,000).

Respondent 5 I don't believe that I filed a complaint

Respondent 8 Mr. Borg runs a very tight ship and is a great advocate for the citizens of Alabama.

Respondent 9 Our experience left us disillusioned in regards to not only the A.S.C., but the office of the Insurance Commissioner. We were never given any confirmation as to a case number or allowed any visual access to "investigative actions." We found the claim of confidentiality superfluous as the investigation involved us and if information deemed to be confidential was contained, it could have been deleted from the paperwork. We still have all the materials we assembled in regards to this matter and would welcome an opportunity to meet with whoever has additional interest in the way our complaint was handled. We kept detailed documentation of what occurred and with whom we dealt.

Respondent 13 My issue was not resolved. I am very displeased.

Respondent 15 I was never told (even after many e-mails) the results of invest (if any) & what I could do to recover money.

Respondent 16 I just wish as a courtesy they could file suit on my behalf or something.

APPENDICES

Performance Reports

FISCAL YEAR 2010 QUARTERLY PERFORMANCE REPORT

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 1	Complete all registrations and exemption filings within statutory time frame.								Governor's Priority:		2
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Quality) Issue securities registrations where appropriate for complete applications or issue deficiency letters within five business days of receipt.	% applications processed within time frame	87	87	87	88	87	91	87	90	87	89
(O2-Quality) Process initial applications filed through the national database for broker dealer agents, investment adviser representatives, broker dealer firms and investment adviser firms within ten days of receipt.	% of complete apps. processed within time frame	85	99	85	99	85	99	85	98	85	98.7

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 2	Conduct a routine audit of at least 30 state registered and state domiciled investment advisers annually so that all are audited within a 4 year cycle.								Governor's Priority:	2	
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Quality) Conduct on-site component of routine investment adviser audits within 2 day time frame.	Average days	2	1.7	2	2	2	2.1	2	1.8	2	1.9
(O2-Quality) Number of audits conducted on state registered and state domiciled investment advisers.	Number of audits conducted	7	6	7	9	8	10	8	8	30	33
(O3-Efficiency) Complete 7.00 audits annually per FTE.	# of audits per analyst	--	--	--	--	--	--	--	--	7	8.25

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 3	Resolve enforcement cases within an average of 18 months of receipt by FY 2010.								Governor's Priority:		2
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Quality) Maintain average time to resolve cases.	avg mos. in which enforcement cases are resolved	--	--	--	--	--	--	--	--	18	10.47

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 4	Develop and implement a personal finance and investor education outreach program for military personnel and their dependents (all branches, active, reserve and guard) by 2010.								Governor's Priority:	2	
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Quality) Increase the number of educational activities (i.e. meetings, workshops, events, website upgrade) by over 10% from FY 08 through FY10.	# of people informed / trained	54	29	54	207	54	60	54	20	216	316
How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2009-10 affected your agency in meeting its desired accomplishments and services?											
No significant impact during 2009-2010 fiscal year. The Alabama Securities Commission is not a General Fund agency and in 2009-2010 generated \$8,500,844 to the General Fund in excess of agency expenditures. We expect flat but stable revenue based upon current economic conditions.											
What administrative improvements did your agency make in fiscal year 2009-10 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements.											
Administrative improvements during FY 10 included our continuing efforts to update and maintain all computer related hardware and software on a 3 year schedule. The Commission has expanded our public investor education within the state. In conjunction with NASAA (North American Securities Administrators Association), SEC (Securities & Exchange Commission) and FINRA (Financial Institutions Regulatory Authority), the commission continues to enhance its audit and examinations programs and is maintaining its association in a special initiative to protect senior investors. After passage of the Dodd-Frank Financial Regulatory Act, the Securities Commission will begin audits of financial advisors with assets under management up to \$100 million (up from \$25 million), prompting a need for additional staff. The Commission is presently undergoing a major upgrade to its core licensing and enforcement databases, which will be completed in FY 11.											

FISCAL YEAR 2011 QUARTERLY PERFORMANCE REPORT

Tuesday, June 07, 2011
EBO Form 10

FY 11 SMART Quarterly Performance Report

Page 2 of 5

Basic Agency

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 1	Complete all registrations and exemption filings within statutory time frame by 2014.								Governor's Priority:	2	
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Issue securities registrations where appropriate for complete applications or issue deficiency letters within five business days of receipt.	% applications processed within time frame	90	93	90	100	90		90		90	
(O2-Quality) Process initial applications filed through the national database for broker dealer agents, investment adviser representatives, broker dealer firms and investment adviser firms within ten days of receipt.	% of complete apps. processed within time frame	90	97	90	99	90		90		90	
* Actual performance data is not currently available for this quarter.											

Tuesday, June 07, 2011
EBO Form 10

FY 11 SMART Quarterly Performance Report

Page 3 of 5

Basic Agency

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 2	Conduct a routine audit of at least 30 state registered and state domiciled investment advisers annually so that all are audited within a 4 year cycle.								Governor's Priority:	2	
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Conduct on-site component of routine investment adviser audits within 2 day time frame.	Average days	2	1.8	2	2	2		2		2	
(O2-Quality) Number of audits conducted.	Number of audits conducted	7	10	8	8	8		7		30	
(O3-Efficiency) Complete 7.00 audits annually per full time securities analyst.	# of audits per analyst	--	--	--	--	--	--	--	--	7	
* Actual performance data is not currently available for this quarter.											

Tuesday, June 07, 2011
EBO Form 10

FY 11 SMART Quarterly Performance Report

Page 4 of 5

Basic Agency

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 3	Resolve enforcement cases within an average of 18 months of receipt by FY 2012.								Governor's Priority:	2	
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Maintain average time to resolve cases.	avg mos. in which enforcement cases are resolved	--	--	--	--	--	--	--	--	18	
* Actual performance data is not currently available for this quarter.											

FY 11 SMART Quarterly Performance Report

Basic Agency

Agency: 336 - Securities Commission				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 4	Maintain average fiscal year number of financial education and fraud prevention activities/events to reach citizens in Alabama.								Governor's Priority:		2
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Present information and programs to help citizens make informed investment decisions and protect themselves from fraud.	# of educational activities/ev ents	--	--	--	--	--	--	--	--	71	
* Actual performance data is not currently available for this quarter.											

Applicable Statutes

CHAPTER 6. SECURITIES.

ARTICLE 1. . GENERAL PROVISIONS.

§ 8-6-1. Short title.

Current through the end of the 2010 Regular Session.

References

This article may be cited as the "Alabama Securities Act."

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 22; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-2. Definitions.

Current through the end of the 2010 Regular Session.

When used in this article, unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Commission or Securities Commission. The securities commission.

(2) Agent. Any individual other than a dealer who represents a dealer or issuer in effecting or attempting to effect sales of securities, but such term does not include an individual who represents an issuer in:

a. Effecting a transaction in a security exempted by subdivisions (1), (2), (3), (4), (9) or (10) of Section 8-6-10;

b. Effecting transactions exempted by Section 8-6-11; or

c. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

A partner, officer, or director of a dealer or issuer is an agent if he otherwise comes within this definition.

(3) Dealer. Any person engaged in the business of effecting transactions in securities for the account of others or for his own account. Such term does not include:

a. An agent, issuer, bank, savings institution, savings and loan association, credit union, or trust company, or

b. A person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions and other dealers.

(4) Guaranteed. Guaranteed as to payment of principal, interest, or dividends.

(5) Issuer. Every person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts for a compensation or a consideration as a promoter for or on behalf of a corporation, trust, unincorporated association, or partnership of any kind to be formed shall be deemed to be an issuer.

(6) Nonissuer. Not directly or indirectly for the benefit of the issuer.

(7) Person. Such term shall include a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, and any unincorporated organization. As used herein the term "trust" shall not include a trust created or appointed under or by virtue of a last will and testament, by instrument of declaration or appointment by any person for the benefit of himself, relatives, friends, servants, or employees, by a court or any public charitable trust.

(8) Sale, Sell, Offer and Offer to sell. "Sale" and "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer or dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and

sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(9) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Company Act of 1940, and Investment Advisers Act of 1940. The federal statutes of those names as amended at any time.

(10) Security. Any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, annuity contract unless issued by an insurance company, bankers' shares, trustees' shares, investment participating bonds, investment trust debentures, units, shares, bonds and certificates in, for, respecting, or based upon any form of securities or collateral, subscriptions and contracts covering or pertaining to the sale or purchase on the installment plan of any security as herein defined, or subscription or contracts covering or pertaining to the sale or purchase of beneficial interest in title to property, profits or earnings, or any right to subscribe to any of the foregoing, or any instrument of any kind commonly known as a security.

(11) State. Any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(12) Underwriter. A person who agrees to take or contracts to dispose of a stipulated amount of securities, or a portion thereof, at a fixed price.

(13) Broker. A dealer, as hereinabove defined.

(14) Suspend. When used in relation to the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative, such term shall mean the temporary cessation or inoperativeness of such registration, whether by reason of operation of law or by reason of an order of the securities commission.

(15) Revoke. To vacate the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative for cause by order of the securities commission.

(16) Cancel. To terminate the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative upon application filed therefor as follows:

a. In the case of a security, upon application therefor filed by the issuer thereof or the person who secured the registration of said security;

b. In the case of a dealer, upon the application therefor filed by such dealer;

c. In the case of an investment adviser, upon the application therefor filed by such investment adviser;

d. In the case of an agent, upon the application therefor filed by either the issuer or dealer employing such agent; and

e. In the case of an investment adviser representative, upon application therefor filed by the investment adviser employing such investment adviser representative.

(17) Fraud, Deceit and Defraud. These terms are not limited to common-law deceit.

(18) Investment adviser. Any person, who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a

business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

- a. An investment adviser representative;
- b. A depository institution, which term includes a person organized, chartered, or holding an authorization certificate under the laws of this state or the United States which authorizes the person to receive deposits including a savings, share, certificate, or deposit account, and which is supervised and examined for the protection of depositors by an official or agency of this state or the United States; and a trust company or other institution authorized by federal or Alabama law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the Comptroller of the Currency and is supervised and examined by an official or agency of this state or the United States; but which does not include an insurance company or other organization primarily engaged in the insurance business, or a Morris Plan bank, industrial loan company, or a similar bank or company unless its deposits are insured by a federal agency;
- c. A lawyer, accountant, engineer, or teacher whose performance of investment advisory services is solely incidental to the practice of that person's profession;
- d. A broker-dealer or its agent whose performance of investment advisory services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the investment advisory services;
- e. A publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, or an owner, operator, producer, or employee of a cable, radio or television network, station, or production facility if the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client;
- f. An insurance company, its employees, or agents who are engaged exclusively in the sale or distribution of life, health, or casualty insurance or insurance related products.

(19) Investment adviser representative. Any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

- a. Makes any recommendation or otherwise renders advice regarding securities,
- b. Manages accounts or portfolios of clients,
- c. Determines which recommendation or advice regarding securities should be given,
- d. Solicits, offers, or negotiates for the sale of or sells investment advisory services, unless the solicitation, offering, or selling activities are solely incidental to his or her profession and such person is a dealer or salesman registered under Section 8-6-3 and the person would not be an investment adviser representative except for the performance of activities described in subdivision (18)d. of this section, or
- e. Supervises employees who perform any of the foregoing.

(20) Officer. A president, vice-president, treasurer, secretary, comptroller, or any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(21) Applicant. A person, natural or otherwise, executing or submitting an application for registration.

(22) Registrant. An applicant for whom a registration has been declared effective by the commission.

(23) Affiliate. A person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, an applicant or registrant.

(24) Controlling person, Control, Controlling, Controlled by, Under common control with. The possession, directly, or indirectly, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(25) Salesman. An agent, as hereinabove defined.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 9; Acts 1975, No. 1044, p. 2095, § 1; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-3. Registration and bonds of dealers, agents, investment advisers, etc.

Current through the end of the 2010 Regular Session.

(a) It is unlawful for any person to transact business in this state as a dealer or agent for securities unless he or she is registered under this article. It is unlawful for any dealer or issuer to employ an agent unless the agent is registered.

(b) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(1) He or she is so registered under this article;

(2) His or her only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than \$1,000,000, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commission; or

(3) He or she has no place of business in this state and during any period of 12 consecutive months does not direct business communications in this state in any manner to more than five clients, other than those specified in subdivision (2), whether or not he, she, or any of the persons to whom the communications are directed is then present in this state.

(c) It is unlawful for any investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under this article. The registration of an investment adviser representative is not effective during any period when he or she is not employed by an investment adviser registered under this article. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the commission.

(d) A dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the securities commission, or its designee, an application, together with a consent to service of process pursuant to Section 8-6-12 and payment of the fee prescribed in subsection (h) of this section.

The application shall contain whatever information the commission requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant and, in the case of a dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving moral turpitude, a security or any aspect of the securities business, any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser.

(e) The commission shall by rule or order require all or any class of applicants to post surety bonds, or cash, in an amount not less than \$50,000, and shall determine their conditions.

(f) If no order to the contrary is in effect and no proceeding is pending under subsection (j) of this section, registration becomes effective at 5:00 P.M. on the sixtieth day after an application is filed. The Securities Commission may specify an earlier effective date, and it may by order defer the effective date until 5:00 P.M. of the sixtieth day after the filing of any amendment. The commission shall require as conditions of registration that:

- (1) All or any class of applicants and, in the case of a corporation or partnership, the officers or partners, pass an examination, either written or oral, the form, content, and conduct of which the commission shall prescribe by rule or order.
- (2) A dealer shall have and maintain a minimum net capital as the commission shall prescribe by rule or order. The commission may by rule establish minimum financial requirements for investment advisers, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.
- (3) Every registration expires December 31 unless renewed as hereinafter provided.
- (g) Registration of a dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the Securities Commission, or its designee, prior to the expiration thereof, a renewal application. The renewal application shall contain such information as the commission may require to indicate any material change in the information contained in the original application or any renewal application for registration filed with the commission, or its designee, by the applicant, payment of the prescribed fee and a bond as provided in subsection (e) of this section, if the financial condition of the registrant requires such bond. In order to continue the effectiveness of registration and to entitle the dealer or adviser to a renewal thereof, such registrant shall file a financial statement prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant showing the financial condition of such registrant at the close of its fiscal period. This statement shall be filed with the commission, or its designee, within 60 days after the close of the registrant's fiscal period unless an extension of time is granted by the commission. The commission shall accept for filing a financial statement in the form required to be filed with the United States Securities and Exchange Commission from those registrants who are registered therewith.
- (h) The fee for initial or renewal registration shall be two hundred fifty dollars (\$250) for a dealer, sixty dollars (\$60) for an agent, two hundred fifty dollars (\$250) for an investment adviser and sixty dollars (\$60) for an investment adviser representative. The fee for initial or renewal registration of an investment adviser or investment adviser representative shall be deposited in the Alabama Securities Commission Fund in the State Treasury to be drawn upon by the commission for its use in administration of this article. When an application is denied or withdrawn, the Securities Commission shall retain the fee.
- (i) Every registered dealer and investment adviser shall make and keep such accounts and other records as the Securities Commission by rule prescribes. All records so required shall be preserved for five years unless the commission prescribes otherwise for particular types of records. The commission may require that certain information be furnished or disseminated by a registrant as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the commission in its discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement. All the records of any registrant are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commission, within or without this state, as the commission deems necessary or appropriate in the public interest or for the protection of investors.
- (j) The Securities Commission may by order deny, suspend, or revoke any registration, or censor or bar any applicant or registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the commission finds that the order is in the public interest and that the applicant or registrant or, in the case of a dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser:

- (1) Has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstance under which it was made, false or misleading with respect to any material fact;
- (2) Has willfully violated or willfully failed to comply with any provisions of this article, or a predecessor act, or any rule or order under this article, or a predecessor act;
- (3) Has been convicted of any misdemeanor involving moral turpitude, a security, or any aspect of the securities business or any felony;
- (4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
- (5) Is the subject of an order of the commission denying, suspending, or revoking registration as a dealer, agent, investment adviser, or investment adviser representative;
- (6) Is the subject of an order, adjudication, or determination entered within the past 10 years by a securities or commodities agency or a national securities exchange or association registered under the Securities Exchange Act of 1934, or an administrator of another state, or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the federal mail and wire fraud statutes, or the securities, investment adviser, or commodities law of any other state; but the commission may not enter any order under this subsection on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;
- (7) Has engaged in dishonest or unethical practices in the securities business;
- (8) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commission may not enter an order against a dealer or investment adviser under this subsection without a finding of insolvency as to the dealer or investment adviser;
- (9) Has not complied with a condition imposed by the commission under subsection (f) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;
- (10) Has failed reasonably to supervise his or her agents or employees if he or she is a dealer, or his or her investment adviser representatives or employees if he or she is an investment adviser to assure their compliance with this article; or
- (11) Has failed to pay the proper filing fee, but the commission may enter only a denial order under this subsection, and it shall vacate any such order when the deficiency has been corrected.

The commission may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection.

(k) If the Securities Commission finds that any registrant or applicant for registration is no longer in existence, has ceased to do business as a dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commission may by order cancel the registration or application.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 2; Acts 1969, No. 605, p. 1093, § 1; Acts 1971, No. 2243, p. 3598, §§ 1, 2; Acts 1979, No. 79-462, p. 827, § 1; Acts 1988, 1st Ex. Sess., No. 88-722, p. 112; Acts 1990, No. 90-527, p. 772, § 1; Act 2009-774, p. 2401, § 1.)

§ 8-6-4. Registration of securities--Required; exceptions.

Current through the end of the 2010 Regular Session.

It is unlawful for any person to offer or sell any security in this state unless:

- (1) It is registered under this article;
- (2) The security is exempt from registration under Section 8-6-10; or
- (3) The transaction is exempt under Section 8-6-11.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 3; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-5. Registration of securities--Registration by notification.

Current through the end of the 2010 Regular Session.

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under Section 8-6-6:

- (1) Any security whose issuer and any predecessors have been in continuous operation for at least five years if:
 - a. There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision; and
 - b. The issuer and any predecessors during the past three fiscal years have had average net earnings determined in accordance with generally accepted accounting practices which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:
 1. Equal at least five percent of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed, (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or, if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or
 2. If the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal at least five percent of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued.
 - (2) Any security, other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if any security of the same class has ever been registered under this article, or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this article, or a predecessor act.
 - (3) Any national market system security under Section 11A of the Securities Exchange Act of 1934, including any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, and any warrant or right to purchase or subscribe to any of the foregoing; provided, however, that the Securities Commission may by rule limit the application of this subdivision (3) if it finds such action to be in the public interest.
- (b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in Section 8-6-8 and, if required under Section 8-6-12, a consent to service of process meeting the requirements of that section:
- (1) A statement demonstrating eligibility for registration by notification;

- (2) With respect to the issuer, its name, address, and form of organization, the state or foreign jurisdiction and the date of its organization, and the general character and location of its business;
- (3) A description of the securities being registered;
- (4) Total amount of securities to be offered and amount of securities to be offered in this state;
- (5) The price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any person other than an underwriting and selling discounts or commissions, and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees, including cash, securities, or anything else of value;
- (6) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (7) Description of any options outstanding or to be created in connection with the securities being offered;
- (8) Any adverse order or judgment previously entered in connection with the offering by any court or the securities and exchange commission;
- (9) A copy of an offering circular or prospectus to be used in connection with the offering;
- (10) In the case of any registration under subdivision (a) (2) of this section which does not also satisfy the conditions of subdivision (a) (1) of this section, a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than two years.
- (c) If no order to the contrary is in effect and no proceeding is pending under Section 8-6-9, a registration statement under this section automatically becomes effective at 3:00 P.M. central standard time on the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Securities Commission determines.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 4; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-6. Registration of securities--Registration of certain securities by coordination.

Current through the end of the 2010 Regular Session.

- (a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.
- (b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in Section 8-6-8:
 - (1) Two copies of the prospectus filed under the Securities Act of 1933, together with all amendments thereto;
 - (2) If the Securities Commission requests, any other information or copies of any other documents filed under the Securities Act of 1933;
 - (3) The amount of securities to be offered in this state;
 - (4) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
 - (5) Any adverse order or judgment previously entered in connection with the offering by any court or the Securities and Exchange Commission;
 - (6) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.
- (c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

- (1) No order to the contrary is in effect;
- (2) The registration statement has been on file with the securities commission for at least five full business days; and
- (3) A statement; of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for one full business day, or such shorter period as the commission permits by rule or otherwise, and the offering is made within those limitations. The registrant shall promptly notify the commission by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.
- (d) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the commission may enter an order denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (c) of this section, if the commission promptly notifies the registrant by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of subsection (c) of this section as to notice and posteffective amendment, the order is void as of the time of its entry. The commission may by rule or otherwise waive either or both of the conditions specified in subdivisions (c) (2) and (c) (3) of this section. If the federal registration statement becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commission of the date when the federal registration statement is expected to become effective, the commission shall promptly advise the registrant by telephone or telegram at the registrant's expense whether all the conditions are satisfied and whether it then contemplates the institution of a proceeding under Section 8-6-9, but this advice by the commission does not preclude the institution of such a proceeding at any time.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 5; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-7. Registration of securities--Registration by qualification.

Current through the end of the 2010 Regular Session.

- (a) Any security may be registered by qualification.
- (b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to payment of the registration fee prescribed in Section 8-6-8 and, if required under Section 8-6-12, a consent to service of process meeting the requirements of that section:
 - (1) With respect to the issuer and any significant subsidiary, its name, address and form of organizations, the state or foreign jurisdiction and date of its organization, the general character and location of its business and a description of its physical properties and equipment;
 - (2) With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions, his name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him as of the date of the offering and a record of any securities of the issuer held by him previous to the filing of the application and the offering date and the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer and its predecessors, parents, and subsidiaries;

- (3) With respect to any person not named in subdivision (b) (2), owning of record, or beneficially if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) (2) of this section other than his occupation;
- (4) With respect to every promoter not named in subdivision (b) (2) of this section, if the issuer was organized within the past three years, the information specified in subdivision (b) (2), any amount paid to him and the consideration for any such payment;
- (5) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;
- (6) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses and legal, engineering and accounting expenses to be incurred by the issuer in connection with the offering, the name and address of every underwriter and every recipient of a finder's fee, a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (7) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purpose stated, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;
- (8) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (b) (2), (b) (3), (b) (4), (b) (5) or (b) (7) of this section and by any persons who hold or will hold 10 percent or more in the aggregate of any such options;
- (9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
- (10) Any adverse order or judgment previously entered in connection with the offering by any court or the securities and exchange commission and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated;
- (11) Six copies of any prospectus or circular intended as of the effective date to be used in connection with the offering;
- (12) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;
- (13) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;
- (14) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the three fiscal years preceding

the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(c) A registration statement under this section becomes effective when the securities commission so orders. The commission may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) of this section to be sent or given to each person to whom an offer is made before or concurrently with:

(1) The first written offer made to him, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution,

(2) The confirmation of any sale made by or for the account of any such person,

(3) Payment pursuant to any such sale, or

(4) Delivery of the security pursuant to any such sale, whichever first occurs; but the commission shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 6; Acts 1979, No. 79-462, p. 827, § 2; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-8. Registration of securities--Registration statement; conditions precedent; bond; notice of action; fees; quarterly reports and financial statements; discharge from supervision.

Current through the end of the 2010 Regular Session.

(a) A registration statement on securities may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer. Any document filed under this article within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commission may permit, by rule or otherwise, the omission of any item of information or document from any registration statement.

(b) The Securities Commission may require as a condition of registration by qualification or coordination that: (1) proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, or (2) any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the commission to have been actually earned on the investment in any common stock so held. The commission shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owner of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(c) The Securities Commission shall take official action on the application for registration by qualification within 60 days after the application has been filed and give written notice thereof, to the applicant or applicants. If the application is denied, the notice shall state the grounds for denial or, if action is delayed, the notice shall state the reasons for the delay.

(d) For the registration of securities there shall be paid to the Securities Commission a filing fee of \$40, plus a registration fee of one tenth of one percent of the aggregate offering price of the securities which

are to be offered in this state, but the registration fee shall in no case be more than one thousand five hundred dollars (\$1,500) nor less than one hundred dollars (\$100). When a registration statement is withdrawn before the effective date or a pre-effective order is entered under Section 8-6-9, the commission shall retain the filing and registration fees. An open-end management company, a face amount certificate company, or a unit investment trust, as defined in the Investment Company Act of 1940, may register an indefinite amount of securities under a registration statement. Such registrant, at the time of filing, shall pay the filing fee of one hundred dollars (\$100) and a registration fee of one thousand five hundred dollars (\$1,500) and within 60 days after the end of each year during which its registration statement is effective, the registrant shall file a report on a form the commission, by rule, adopts, specifying its sale of securities to persons in this state during such year. Such registrant shall pay the same registration fee each year during which the registration statement remains in effect.

(e) When securities are registered, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered dealer. Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, except during the time an order is in effect under Section 8-6-9. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction: (1) so long as the registration statement is effective, and (2) between the thirtieth day after the entry of any order suspending or revoking the effectiveness of the registration statement under Section 8-6-9, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement. A registration statement which has become effective may not be withdrawn for a period of one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commission.

(f) The Securities Commission may require the person who filed the registration statement to file reports, but not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to securities registered by coordination and notification; provided, however, that where a registration statement has been filed by a person other than the issuer or an affiliate of the issuer, the commission may require such person to file such reports on an annual basis only.

(g) Every issuer whose securities have been registered by qualification and the registration of whose securities has not been cancelled and who has not been discharged from filing further quarterly reports under the provisions of subsection (i) of this section shall file within 30 days after the close of business on December 31, March 31, June 30, and September 30 of each year and at such other reasonable times as may be required by the Securities Commission, a statement, verified under oath by some person having actual knowledge of the facts therein stated, setting forth, in such form as may be prescribed by the commission, the financial condition, the amount of assets and liabilities of such issuer on the above date and such other information as the commission may require. If any issuer subject to the provisions of this subsection shall willfully fail or refuse to comply with any of the provisions of this subsection and shall continue to so fail or refuse for 30 days after notice or demand, the registration statement of the issuer's securities shall thereupon be revoked, and it shall thereafter be unlawful for any such issuer, his or her agent or agents, any dealer or salesman to sell such securities in this state.

(h) Any issuer, whose securities have been registered by qualification as provided in Section 8-6-7, who has completed the sale of the securities so registered, or who desires to discontinue the sale of said registered securities, and who desires to be discharged from further supervision of the Securities Commission or from further compliance with the Alabama securities law may file with the commission a notice in writing to such effect, and the commission may thereupon enter an order cancelling the

registration of such securities; and such issuer shall thereupon be discharged from filing any financial report except as the commission may require up to and including the date of the filing of the notice as hereinabove provided. No such notice may be filed within one year after the effective date of the registration statement if any securities of the same class as those registered are outstanding.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 7; Acts 1969, No. 605, p. 1093, § 2; Acts 1979, No. 79-462, p. 827, § 3; Acts 1990, No. 90-527, p. 772, § 1; Act 2009-774, p. 2401, § 1.)

§ 8-6-9. Registration of securities--Denial, suspension and revocation of registration.

Current through the end of the 2010 Regular Session.

The Securities Commission shall issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement in the sale of securities if it finds that the order is in the public interest and that:

- (1) The registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.
- (2) Any provision of this article or any rule, order, or condition lawfully imposed under this article has been willfully violated in connection with the offering by:
 - a. Any person filing the registration statement;
 - b. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or
 - c. Any underwriter.
- (3) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the issuer, or any underwriter has:
 - a. Willfully violated or willfully failed to comply with any provision of this article or any rule or order under this article, or any predecessor act; or
 - b. Has been convicted of a felony or any misdemeanor involving moral turpitude, a security, or any aspect of the securities business.
- (4) The security registered or sought to be registered is the subject of a permanent injunction or temporary restraining order of any court of competent jurisdiction entered under any other federal or state act applicable to the offering, but:
 - a. The commission may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on; and
 - b. It may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section.
- (5) The issuer's enterprise or method of business includes or would include activities which are illegal where performed.
- (6) The offering has worked or tended to work a fraud upon purchasers or would so operate.
- (7) The offering is being made on terms that are unfair, unjust, or inequitable.
- (8) When a security is sought to be registered by notification, it is not eligible for such registration.
- (9) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (b) (6) of Section 8-6-6.

(10) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, promoters' profits or participation, or unreasonable amounts or kinds of options.

(11) The applicant or registrant has failed to pay the proper registration fee, but the commission may enter only a denial order under this subdivision, and it shall vacate any such order when the deficiency has been corrected.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 8; Acts 1969, No. 605, p. 1093, § 3; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-10. Registration of securities--Exempt securities.

Current through the end of the 2010 Regular Session.

Sections 8-6-4 through 8-6-9 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, any agency, corporate, or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency, corporate, or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of this state.

(4) Any security issued by and representing an interest in, a debt of, or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of this state.

(5) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is any of the following:

a. Subject to the jurisdiction of the Interstate Commerce Commission.

b. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of a company within the meaning of that act.

c. Regulated in respect to its rates and charges by a governmental authority of the United States or any state.

d. Regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

(7) Any national market system security under Section 11A of the Securities Exchange Act of 1934 (including any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; and any warrant or right to purchase or subscribe to any of the foregoing) which is so designated or approved for designation upon notice of issuance on an interdealer quotation system operated by a national securities association registered under Section 15A of the Securities Exchange Act of 1934, or any security (including any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; and any warrant or right to purchase or subscribe to any of the foregoing) which is listed or approved for listing upon notice of issuance on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, if the listing or designation criteria applicable to the issuer of that security provide minimum corporate governance standards substantially equivalent to those applicable to securities on the New York Stock

Exchange, the American Stock Exchange, or the National Association of Securities Dealers National Market System as of January 1, 1991. The commission may by order deny, revoke, or suspend the exemption of a specific issue of securities or by rule any category of securities when necessitated by the public interest and for the protection of investors.

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes or as a chamber of commerce, trade, or professional association, provided the issuer first files with the commission a written notice specifying the terms of the offer and the commission does not by order disallow the exemption within 15 days thereof.

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited or any guarantee of the paper or of any renewal.

(10) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(11) A security issued by an issuer registered as an open-end management investment company or unit investment trust under Section 8 of the Investment Company Act of 1940 if:

a. The Securities Commission has received prior to the offer or sale of the securities:

1. A notice of intention to sell which has been executed by the issuer and which sets forth the name and address of the issuer and the description of the securities to be offered in this state; and

2. A nonrefundable filing fee of three hundred fifty dollars (\$350) for an open-end management investment company with total net assets of \$25,000,000 or less; a nonrefundable filing fee of seven hundred dollars (\$700) for an open-end management investment company with total net assets of more than \$25,000,000 but less than \$100,000,000; a nonrefundable filing fee of one thousand two hundred dollars (\$1,200) for an open-end management investment company with total net assets equal to or greater than \$100,000,000; or a nonrefundable filing fee of \$200 for a unit investment trust. Fees collected under this section shall be deposited in the Alabama Securities Commission Fund in the State Treasury for the use of the Alabama Securities Commission in the administration of this article.

b. In the event any offer or sale of a security of an open-end management investment company is to be made more than 12 months after the date notice under paragraph (b) is received by the director, another notice and payment of the applicable fee shall be required.

c. For the purpose of this subdivision an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 10; Acts 1969, No. 605, p. 1093, § 5; Acts 1990, No. 90-527, p. 772, § 1; Acts 1991, No. 91-320, p. 584, § 1; Acts 1992, No. 92-524, p. 1059, § 1; Act 2009-774, p. 2401, § 1.)

§ 8-6-11. Registration of securities--Exempt transactions.

Current through the end of the 2010 Regular Session.

(a) Except as hereinafter in this section expressly provided, Sections 8-6-3 through 8-6-9 shall not apply to any of the following transactions:

(1) Any isolated nonissuer transaction, whether effected through a dealer or not;

(2) Any nonissuer transaction in an outstanding security by a registered dealer if:

a. The issuer has a class of securities subject to registration under Section 12 of the Securities Exchange Act of 1934 and has been subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 for not less than 180 days before the transaction; or has filed and maintained with the commission for not less than 180 days before the transaction information, in such form as the

commission, by rule, specifies, substantially comparable to the information which the issuer would be required to file under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934, or the securities have been the subject of an effective registration statement within 180 days before the transaction, or the issuer is required to file and has filed all reports under Section 13 of the Securities Exchange Act of 1934, or the issuer is exempted from registration by Section 12(g)(3) of the Securities Exchange Act of 1934, it or its predecessor in interest has been in existence for at least five years, the security is listed for trading on a foreign securities exchange and has been trading for at least six months and continues to trade on such exchange, and the aggregate market value of shares, the ownership of which is unrestricted, is not less than \$500,000,000; or

b. The issuer is an investment company registered under the Investment Company Act of 1940 and has been subject to the reporting requirements of Section 30 of that act for not less than 180 days before the transaction; or

c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year, within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any sale or the offering for sale of any security at any judicial, executor's, administrator's, guardian, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy;

(7) Any transaction executed by a bona fide pledge without any purpose of evading this article;

(8) Any offer or sale to a bank, savings institution, credit union, trust company, insurance company or investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction which is part of an issue of which there are no more than 10 purchasers [other than those designated in subdivision (a)(8) of this section] wherever located, of securities from the issuer during any period of 12 consecutive months if:

a. The issuer reasonably believes that all the buyers are purchasing for investment and not with a view to distribution, and such issuer exercises reasonable care to assure this investment intent, which reasonable care shall be presumed if the following conditions are satisfied:

1. Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or herself or for other persons;

2. Written disclosure to each purchaser prior to sale that the securities have not been registered under the act and, therefore, cannot be resold unless they are registered under the act or unless an exemption from registration is available;

3. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the act and setting forth or referring to the restrictions on transferability and sale of the securities; and

b. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; and

c. No public advertising or general solicitation is used in connection with the issue of which the transaction in reliance on this exemption is a part.

Sections 8-6-3 through 8-6-9 shall not apply to any offer made pursuant to this subdivision (a)(9) in which no sale results.

But the Securities Commission may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption or decrease or increase the number of purchasers permitted, or waive the conditions in paragraphs a. and b. of this subdivision (9) with or without the substitution of a limitation on remuneration.

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days of their issuance, if:

a. No commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state; or

b. The issuer first files a notice specifying the terms of the offer and the Securities Commission does not by order disallow the exemption within the next five full business days;

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this article and the Securities Act of 1933 if no order of denial, suspension, or revocation is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(12) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(13) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets; or

(14) Any transaction by an issuer if:

a. The aggregate amount of the total offering, within or without this state, shall not exceed \$500,000, less the aggregate offering price of all securities sold within 12 months before the start of and during the offering of securities under this subsection or in reliance on the exemption contained in paragraph a. of subdivision (a)(9) of this section or which have been sold in violation of Section 8-6-4.

b. No person purchases more than \$15,000 of the securities offered and sold in reliance upon the exemption contained in this paragraph, except that this limitation on the amount that may be purchased shall not apply to "accredited investors" as defined in 17 Code of Federal Regulations § 230.501.

c. A disclosure document is delivered to any purchaser of the securities sold pursuant to this exemption prior to or simultaneously with the execution by the purchaser of a written agreement to purchase, the delivery of a confirmation of sale, or the payment for securities offered by means of such disclosure document, whichever occurs first. The disclosure document under which securities are sold pursuant to this exemption shall contain the following:

1. With respect to the issuer: its name, street address, form of organization, and its telephone number; the state or foreign jurisdiction and the date of its organization; a brief description of the type and location of its business;

2. A brief description of the material risks associated with the purchase of the securities;

3. The use of proceeds from the offering, including a description of expenses, commissions and fees paid in connection with the offering and the net proceeds available for use by the issuer;

4. A description of the capital stock of the issuer if a corporation or the equity ownership if an organization other than a corporation, including, where appropriate, the number of shares of capital stock issued and outstanding, the number of shares owned by management, and the options outstanding, if any, and the average exercise price for such options;

5. The dilution, if any, to purchasers of the securities offered for sale pursuant to this exemption;

6. A description of the management of the issuer and material transactions between the issuer and management;
7. A statement that additional information concerning the issuer may be obtained upon request, including, where applicable, articles of incorporation or partnership agreement;
8. The following financial statements which may, but need not, be certified: (i) a balance sheet of the issuer or a consolidated balance sheet of the issuer and its subsidiaries prepared in accordance with generally accepted accounting principles, as of a date within ninety days prior to the first offer of sale; and (ii) a profit and loss statement of the issuer or consolidated statement of the issue and its subsidiaries prepared in accordance with generally accepted accounting principles for each of the two fiscal years preceding the date of the balance sheet referred to above and for the interim period, if any, between the close of the most recent of such fiscal years and the date of the balance sheet and for the corresponding period of the preceding year or if the issuer and its predecessor have been in existence for less than two fiscal years, the profit and loss statement for the period for which it has been in existence;
9. The disclosure document shall contain substantially the following information shown boldly on the outside cover:

The securities are offered pursuant to a claim of exemption under the Alabama Securities Act. A registration statement relating to these securities has not been filed with the Alabama Securities Commission. The commission does not recommend or endorse the purchase of any securities, nor does it pass upon the accuracy or completeness of this private placement memorandum. Any representation to the contrary is a criminal offense.

10. The commission may, by rule or order, require as a condition of exemption under this subdivision (a)(14) that the disclosure document contain any designated part of the information as would be required by Part 1 of Form S-18, Code of Federal Regulations 239.28 not otherwise disclosed by this subdivision (a)(14), or permit the omission of any item of information from the disclosure document.
- d. The seller reasonably believes that all buyers are purchasing for investment.
- e. No commission, finders fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state, unless such person is registered in this state pursuant to Section 8-6-3.
- f. If the issuer is a corporation, its principal office and a majority of its full-time employees are located in this state.
- g. If the issuer is a limited partnership, at least 80 percent of its assets are located in this state.
- h. At least 80 percent of the proceeds of the offering under this subdivision (a)(14) are used in the issuer's operations in this state.
- i. At least 80 percent of the net proceeds of the offering under this subdivision (a)(14) are committed for use in a specific business.
- j. Securities offered or sold under this subdivision (a)(14) are not offered or sold on credit or credit terms.
- k. Offers and sales which are exempt under this subdivision (a)(14) are not combined with offers and sales by issuers in transactions which are exempt under any other rule or section of this article.
- l. No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Rule 252(c), (d), (e) or (f) of Regulation A, 17 Code of Federal Regulations § 230.252(c), (d), (e), and (f), adopted under the Securities Act of 1933 (generally described as: the issuer, any of its predecessors or any affiliated issuer; any of the directors, officers, general partners, or beneficial owners of 10 percent or more of any equity securities of the issuer; any underwriter of the securities or any partner, director, or officer of any such underwriter; or any issuer subject to the reporting requirements of the Securities Exchange Act of 1934 who has failed to file required reports):
 1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption.

2. Has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.
 3. Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.
 4. Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
 5. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.
 6. The prohibitions of subparagraphs 1, 2, 3, and 5 above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.
 7. Any disqualification caused by this section may be waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.
 8. The disqualification found in 17 Code of Federal Regulations § 230 of Regulation D, shall apply also to offerings made pursuant to Rule 506 of the Code of Federal Regulations.
- m. The issuer shall file with the Securities Commission:
1. An application for exemption on Form D, 17 Code of Federal Regulations § 239.500 no later than five full business days prior to the commencement of the offering in this state. The application for exemption shall include two copies of all information furnished by the issuer to any of the offerees. The commission shall issue an order of exemption, notice of deficiency, or denial of exemption within the five full day business period;
 2. A notice of Part C of Form D, 17 Code of Federal Regulations § 239.500, no later than 30 days after the completion date of the offering;
 3. The notice of Form D, 17 Code of Federal Regulations § 239.500, required by subparagraphs 1. and 2. above shall be manually signed by a person duly authorized by the issuer;
 4. Every application for exemption provided for in subparagraph i. above shall be accompanied by a nonrefundable filing fee of \$150. Such filing fee shall be deposited in the Alabama Securities Commission Fund in the State Treasury to be drawn upon by the commission for its use in administration of this article. All applications for exemption and notices on Form D, 17 Code of Federal Regulations § 239.500 shall be considered filed with the Securities Commission as of the date on which received at the office of the Securities Commission;
 5. Unless otherwise available, included with or in the initial notice shall be a consent to service of process as provided for in Section 8-6-12.

But the Securities Commission may by rule or order, as to any security or transaction of any type of security or transaction, withdraw or further condition this exemption.

(b) The Securities Commission may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds the sale of such security would work or tend to work a fraud upon the purchasers thereof. No order under this subsection may operate retroactively. No person may be considered to have violated this article by reason of any offer or sale effected after the entry of an order under this subsection if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under this article, the burden of proving an exemption from a definition is upon the person claiming it.

(c) Any individual, corporation, partnership, or association who makes application to the Securities Commission for any exemption from full registration under subdivision (a)(9) of this section shall be assessed a filing fee in the amount of three hundred dollars (\$300) upon application for such exemption. The fee shall accompany the application and shall not be refunded whether the application is approved or rejected. Fees collected under this subsection shall be deposited in a special account in the State Treasury for the use of the commission in the administration of this article.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 11; Acts 1971, No. 2244, p. 3600; Acts 1975, No. 1044, p. 2095, § 2; Acts 1979, No. 79-462, p. 827, § 4; Acts 1990, No. 90-527, p. 772, § 1; Acts 1991, No. 91-320, p. 584, § 1; Act 2009-774, p. 2401, § 1.)

§ 8-6-12. Registration of securities--Applicability of provisions of article; consent to service of process on Secretary of State.

Current through the end of the 2010 Regular Session.

(a) The provisions of this article shall apply to persons who sell or offer to sell when

- (1) an offer to sell is made in this state, or
- (2) an offer to buy is made and accepted in this state.

(b) The provisions of this article shall apply to persons who buy or offer to buy when

- (1) an offer to buy is made in this state, or
- (2) an offer to sell is made and accepted in this state.

(c) An offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer

- (1) originates from this state, or
- (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) An offer to buy or to sell is accepted in this state when acceptance

- (1) is communicated to the offeror in this state, and
- (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e)(1) Every applicant for registration as a dealer or salesman under this article and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the security commission, in such form as it prescribes, an irrevocable consent appointing the secretary of state to be his attorney to receive service of any lawful process in any noncriminal action or proceeding against him, or his successor, executor, or administrator, which arises under this article or any rule or order hereunder after the consent has been filed with the same force and validity as if served personally on the person filing the consent.

(2) A person who has filed such a consent in connection with a previous registration need not file another.
(3) Service may be made by leaving a copy of the process in the office of the secretary of state, but it is not effective unless:

- a. The plaintiff, who may be the securities commission, in an action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commission, and
- b. The plaintiff's affidavit of compliance with this clause is filed in the case on or before the return day of the process, if any, or within such further time as the court allows; provided however, that this subsection shall not apply to an issuer whose securities are registered by coordination with the commission.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 12; Acts 1979, No. 79-462, p. 827, § 5; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-13. False filings. Repealed by Acts 1977, No. 607, p. 812, § 9901, as amended, effective January 1, 1980.

Current through the end of the 2010 Regular Session.

§ 8-6-14. Filing or registration not finding of truth, completeness, etc., of documents; representations concerning effect of registration or exemption.

Current through the end of the 2010 Regular Session.

- (a) Neither the fact that an application for registration under Section 8-6-3 or a registration statement under Sections 8-6-5, 8-6-6 or 8-6-7 has been filed, nor the fact that a person or security is effectively registered constitutes a finding by the Securities Commission that any document filed under this article is true, complete, and not misleading.
- (b) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Securities Commission has passed in any way upon the merits or qualifications of or recommended or given approval to any person, security, or transaction.
- (c) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 14; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-15. Investigations and subpoenas by commission.

Current through the end of the 2010 Regular Session.

- (a) The Securities Commission, in its discretion, may:
 - (1) Make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration in the sale of securities should be granted, denied, or revoked, whether any person has violated or is about to violate any provision of this article or any rule or order hereunder, to aid in the enforcement of this article or in the prescribing of rules and forms hereunder;
 - (2) Require or permit any person to file a statement in writing, under oath, or otherwise as the commission may determine, as to all the facts and circumstances concerning the matter to be investigated; and
 - (3) Publish information concerning any violation of this article or any rule or order hereunder.
- (b) For the purpose of any investigation or proceeding under this article, the Securities Commission or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commission deems relevant or material to the inquiry.

(c) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction may issue, upon application by the Securities Commission, to that person an order requiring him to appear before the commission or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Securities Commission or in obedience to the subpoena of the commission or any officer designated by it, in any proceeding instituted by the commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 15; Acts 1969, No. 605, p. 1093, § 6; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-16. Administrative cease and desist authority to commission; injunctive relief; appointment of receivers or conservators for defendants or defendants' assets; court ordered rescission, restitution, or disgorgement for violations.

Current through the end of the 2010 Regular Session.

Whenever it appears to the Securities Commission that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule or order hereunder, it may, in its discretion, do either or both of the following:

- (a) Issue a cease and desist order, with or without a prior hearing, against the person or persons engaged in the prohibited activities, directing them to cease and desist from engaging in the act or practice.
- (b) Bring an action in its discretion in any court of competent jurisdiction to enjoin the act or practice and to enforce compliance with this article or any rule or order issued hereunder.

Upon a proper showing, a permanent injunction, temporary restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the commission, the court may enter an order of rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this article or any rule or order adopted or issued pursuant to this article. The Securities Commission shall not be required to post a bond.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 16; Acts 1990, No. 90-527, p. 772, § 1; Acts 1992, No. 92-524, p. 1059, § 1.)

§ 8-6-17. Prohibited acts regarding offer, sale, or purchase of securities.

Current through the end of the 2010 Regular Session.

(a) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:

- (1) Employ any device, scheme, or artifice to defraud;
 - (2) Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- or

(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) to employ any device, scheme, or artifice to defraud the other person,

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person,

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subdivision shall not apply to any transaction with a customer of a dealer if such dealer is not acting as an investment adviser in relation to such transaction; or

(4) to engage in dishonest or unethical practices as the commission may define by rule.

(c) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(d) Except as may be permitted by rule or order of the commission, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing,

(1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by adviser without the consent of the other party to the contract; and

(3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(e) Subdivision (d)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (d)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(f) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if,

(1) the commission by rule prohibits custody; or

(2) in the absence of rule, the investment adviser fails to notify the commission that he has or may have custody.

(g) The commission may by rule or order adopt exemptions from subdivision (b)(3) and subdivisions (d)(1), (d)(2) and (d)(3) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this act.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 1; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-18. Criminal penalties for violations of article; enforcement; scienter.

Current through the end of the 2010 Regular Session.

(a) A person who willfully violates Section 8-6-3 or Section 8-6-4, upon conviction, shall be guilty of a Class C felony. A person that willfully violates subsection (a), (b), or (c) of Section 8-6-17, upon conviction, shall be guilty of a Class B felony. No prosecution may be commenced under this article more than five years after the alleged violation.

(b) A person who willfully violates any provision of this chapter, other than those noted in subsection (a), or a rule adopted or order issued under this chapter, upon conviction, shall be guilty of a Class A misdemeanor.

(c) The enforcement of the provisions of this article shall be vested in the commission. It shall be the duty of the commission to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The commission shall at once lay before the district attorney of the proper county any evidence which shall come to its knowledge of criminality under this article. In the event of the neglect or refusal of the district attorney to institute and prosecute such violation, the commission shall be authorized to proceed therein with all the rights, privileges, and powers conferred by law upon district or court attorneys including the power to appear before grand juries and to interrogate witnesses before such grand juries.

(d) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

(e) In any proceeding under this article, scienter need not be alleged and proved in prosecutions involving the sale of unregistered securities or in the failure to register as a dealer, agent, investment adviser, or investment adviser representative under this article.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 17; Acts 1969, No. 605, p. 1093, § 7; Acts 1971, No. 2243, p. 3598, § 3; Acts 1979, No. 79-462, p. 827, § 6; Acts 1990, No. 90-527, p. 772, § 1; Act 2009-774, p. 2401, § 1.)

§ 8-6-19. Civil liabilities of sellers, agents, etc.; remedies of purchasers.

Current through the end of the 2010 Regular Session.

(a) Any person who:

(1) Sells or offers to sell a security in violation of any provision of this article or of any rule or order imposed under this article or of any condition imposed under this article, or

(2) Sells or offers to sell a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission,

is liable to the person buying the security from him who may bring an action to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, court costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six percent per year from the date of disposition.

(b)(1) Any person who engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities in violation of subsection (b), (c), (d), (e), or (f) of Section 8-6-17, subsection (b) or (c) of Section 8-6-3, Section 8-6-14, is liable to that person, who may bring an action to recover the consideration paid for such advice and any loss due to such advice, together

with interest at six percent per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

No person may maintain an action hereunder pursuant to a violation of subsection (c) of Section 8-6-3 based solely on the fact that an investment adviser representative other than the one from whom the person received advice is unregistered.

(2) Any person who receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such other person, is liable to that person, who may bring an action to recover the consideration paid for such advice and any loss due to such advice, together with interest at six percent per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

An action based on a violation of subsection (c) of Section 8-6-17 and this section may not prevail where the person accused of the violation sustains the burden of proof that he did not know, and in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(c) Every person who directly or indirectly controls a person liable under subsections (a) or (b) of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every dealer or agent who materially aids in such conduct is also liable jointly and severally with and to the same extent as the person liable under subsection (a) or (b), unless he is able to sustain the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(d) Any tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

(f) No person may obtain relief under this section in an action involving the failure to register unless suit is brought within two years from the date of sale. All other actions for relief under this section must be brought within the earlier of two years after discovery of the violation or two years after discovery should have been made by the exercise of reasonable care. No person may bring an action under subsection (a) of this section:

(1) If the buyer received a written offer, before the action and at a time when he owned the security, to refund the consideration paid together with interest at six percent per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within 30 days of its receipt, or

(2) If the buyer received such an offer before the action and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.

(g) No person who has made or engaged in the performance of any contract in violation of any provision of this article or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any action on the contract.

(h) Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of this article or any rule or order hereunder is void.

(i) The rights and remedies provided by this article are in addition to any other rights or remedies that may exist.

(j)(1) The commission may by order, if it finds such order to be in the public interest, impose an administrative assessment upon any person who violates any provision of this article or any rule or order issued under this article.

(2) Any administrative assessment imposed under this section shall not exceed \$5,000 for each act or omission that constitutes the basis for an order issued under this section, except that the amount of the administrative assessment may not exceed \$50,000 for any person subject to the order.

(3) For the purposes of determining the amount or extent of an administrative assessment, if any, to be imposed under this section, the commission shall consider among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of any provision of this article or any rule or order issued under this article, and the number of persons adversely affected by the conduct.

(4) The administrative assessment under this section is in addition to any other penalty, remedy, or sanction that may be imposed under this article.

(5) All assessments collected under this subsection (j) of Section 8-6-19 shall be deposited in the general fund of the state.

(k)(1) The commission may charge, in addition to any administrative assessment, fine, penalty, remedy, or sanction imposed under this article, the actual cost of any investigation resulting from any violation of any provision of this article or any violation of any rule or order issued under this article or the actual cost of any examination made by the commission pursuant to this article, to the party or parties subject to such investigation or examination. Such charge may include, but is not limited to, a per diem prorated upon the salary cost of any employee of the commission together with actual travel, housing and any and all other reasonable expenses incurred as a result of such investigation or examination.

(2) All charges assessed for costs involved pursuant to subdivision (1) of subsection (k) of Section 8-6-19 shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in the administration of this article.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 18; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-20. Sale of securities of insolvent issuer deemed embezzlement. Repealed by Acts 1977, No. 607, p. 812, § 9901, as amended, effective January 1, 1980.

Current through the end of the 2010 Regular Session.

§ 8-6-21. Commission authorized to swear out warrants of arrest; liability of commission for warrant.

Current through the end of the 2010 Regular Session.

The Securities Commission is authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article, and it shall not be liable in damages or to an action for damages by reason of swearing out warrants or for causing the arrest and detention or imprisonment of any person or persons under such warrant or warrants.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-22. Duties of director; director empowered to swear out warrants of arrest; liability of director for warrant.

Current through the end of the 2010 Regular Session.

The Director of the Securities Commission shall keep the records of the commission and generally perform such duties as the commission may direct. When ordered by the commission, he shall be authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article. He shall not be liable in damages or to an action for damages by reason of

swearing out such warrant or warrants or for causing the arrest, detention, or imprisonment of any person or persons under such warrant or warrants.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-23. Making, amending, and rescinding rules and prescribing forms by commission.

Current through the end of the 2010 Regular Session.

The Securities Commission may from time to time make, amend, and rescind such rules and prescribe such forms as are necessary and desirable to carry out the provisions of this article. No rules or forms may be made or prescribed unless the commission finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this article. In prescribing rules and forms the commission may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this article to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the commission shall be published.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-24. Liability for acts done or omitted in good faith under rules, forms, or orders.

Current through the end of the 2010 Regular Session.

No provision of this article imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Securities Commission, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-25. Hearings to be public; requests for private hearings.

Current through the end of the 2010 Regular Session.

Every hearing in an administrative proceeding shall be public unless the Securities Commission, in its discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-26. Document deemed filed when received.

Current through the end of the 2010 Regular Session.

A document is deemed filed when it is received by the Securities Commission.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-27. Commission to keep register; register to be open for public inspection.

Current through the end of the 2010 Regular Session.

The Securities Commission shall keep a register of all applications for registration and registration statements which are or have ever been effective under this article and all denial, suspension, or revocation orders which have ever been entered under this article. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commission prescribes.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-28. Commission to furnish copies of register entries or documents; certified copy deemed prima facie evidence.

Current through the end of the 2010 Regular Session.

Upon request and at such reasonable charges as it prescribes, the Securities Commission shall furnish to any person photostatic or other copies, certified under its seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this article, any copy so certified is prima facie evidence of the contents of the entry or document certified.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-29. Interpretative opinions by commission.

Current through the end of the 2010 Regular Session.

(a) The Securities Commission, in its discretion, may honor requests from interested persons for interpretative opinions and no-action letters.

(b) Any person who makes application to the Securities Commission for an interpretative opinion or no-action letter shall be assessed a non-refundable filing fee of \$150 upon application for such opinion or letter. Fees collected under this section shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in the administration of this article.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-30. Burden of proving exemption or exception from definition.

Current through the end of the 2010 Regular Session.

In any proceeding under this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 21; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-31. Commission may issue warnings to public and publish information regarding orders.

Current through the end of the 2010 Regular Session.

The Securities Commission may issue and give warnings to the public concerning securities being sold in this state and may in its discretion cause to be published information regarding any orders or rules issued by the commission in the implementation of its duties, including, without limitation, information pertaining to specific orders denying registration or prohibiting the sale of securities.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 25; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-32. Party aggrieved by order entitled to hearing before commission; appeals from action of commission.

Current through the end of the 2010 Regular Session.

(a) Any person aggrieved by an order issued under this article shall be entitled to a hearing pursuant to the provisions of the Alabama Administrative Procedure Act (Section 41-22-1 et seq.) pertaining to "contested cases," if such person, within 28 days after delivery of the order, submits a written request for a hearing before the commission. The order shall disclose the right to a hearing upon written request

within 28 days after delivery of the order. If no timely request for a hearing is made, the order shall constitute a final order of the commission.

(b) Any appeal from any final order of the commission shall be made to the circuit court of Montgomery County and shall be governed by the provisions of the Alabama Administrative Procedure Act pertaining to judicial review.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 19; Acts 1990, No. 90-527, p. 772, § 1.)

§ 8-6-33. Disposition of revenue.

Current through the end of the 2010 Regular Session.

All moneys accruing to or collected by or through the Securities Commission shall be deposited when collected into the state treasury to the credit of the general fund, unless otherwise provided by law.

CREDIT(S)

(Acts 1959, No. 542, p. 1318, § 27; Acts 1969, No. 605, p. 1093, § 8; Acts 1971, No. 2243, p. 3598, § 4; Acts 1990, No. 90-527, p. 772, § 1.)

ARTICLE 2. . SECURITIES COMMISSION.

§ 8-6-50. Created; duties generally.

Current through the end of the 2010 Regular Session.

There is created the Alabama Securities Commission, which shall be responsible for the enforcement of laws governing the issuance, sale, and other transactions relative to securities.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 1.)

§ 8-6-51. Membership; qualifications and appointment of commissioners; use or disclosure of confidential information by commissioners, employees, etc.; civil liability of commissioners.

Current through the end of the 2010 Regular Session.

(a) The Securities Commission shall consist of the Attorney General of Alabama, the State Superintendent of Banks, the State Superintendent of Insurance and four other members appointed by the Governor by and with the advice and consent of the Senate. Two appointed members shall be members of the Alabama Bar Association appointed from a list of three nominees for each position submitted by the bar association, and the other two appointed members shall be certified public accountants appointed from a list of three nominees for each position submitted by the Alabama Society of Certified Public Accountants. The membership of the commission shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(b) No person may be appointed to or by the commission while he is registered as a dealer or salesman under Article 1 of this chapter, while he is an officer, director or partner of any person so registered, while he is an officer, director or partner of an issuer which has a registration statement effective under Article 1 of this chapter or while he is occupying a similar status or performing similar functions.

(c) It is unlawful for any member of the commission, the director or any other officer or employee of the commission to use for personal benefit any information which is filed with or obtained by the director and which is not made public. No provision of this article authorizes any member of the commission, the director or any other officer or employee of the commission to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this article. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to any member of the commission, the director, or any other officer or employee of the commission.

(d) Except upon proof of corruption, no commissioner shall for his acts or his failure to act be civilly liable to any investor, applicant for registration, or any other person.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 2; Acts 1996, No. 96-749, p. 1320, § 3.)

§ 8-6-52. Terms of office of appointed members; filling of vacancies; reappointment of members.

Current through the end of the 2010 Regular Session.

(a) The Governor shall biennially appoint one Securities Commission member to serve for a term of four years; provided, however, that the Governor shall designate for the initial appointments one member to serve for a term of two years and one member to serve for a term of four years from their respective dates of appointment and qualification. Upon the expiration of these initial terms, the term of each member shall be four years from the date of his appointment and qualification, until his successor shall qualify; provided further, however, that, on April 4, 1988, no member shall serve more than two consecutive terms of office.

(b) Vacancies shall be filled by the Governor for the unexpired term.

(c) Members shall be eligible for reappointment.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 3; Acts 1988, No. 88-137, p. 199, § 3.)

§ 8-6-53. Selection of chair; rules for proceedings; meetings; quorum; records and reports; access to offices and records; exercise of powers of director.

Current through the end of the 2010 Regular Session.

(a) The Securities Commission shall select a chair and may adopt rules for conducting its proceedings.

(b) The commission shall meet quarterly on a date it designates and may meet at other times it deems necessary, or when called by the chair or by any two members. Any three members shall constitute a quorum for transacting commission business.

(c) Complete minutes of each meeting shall be kept and filed in the office of the commission and shall be available for public inspection during reasonable office hours.

(d) The commission shall report annually to the Governor, to the legislature and to the state Legislative Council. The report shall contain the minutes of each meeting held during the year, legislative recommendations, a summary of violations of Article 1 of this chapter, actions taken for those violations, and other data and information deemed necessary or appropriate.

(e) Each member of the commission shall have unrestricted access to all offices and records under the jurisdiction of the commission.

(f) The commission, or a majority of the commission, may exercise any power or perform any act that the director is authorized to perform under this chapter.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 4; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-54. Compensation of members.

Current through the end of the 2010 Regular Session.

(a) Each appointed member of the Securities Commission shall be paid \$50 per day, for a period not to exceed a total of 60 days in any one calendar year, while engaged in the performance of his duties, and shall receive mileage and per diem as provided by Article 2 of Chapter 7 of Title 36.

(b) Ex officio members shall not be entitled to any extra compensation for performing their duties under this chapter.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 5.)

§ 8-6-55. Director--Appointment; duties generally.

Current through the end of the 2010 Regular Session.

(a) The Securities Commission shall appoint a full-time director who shall be a career employee subject to the provisions of the Alabama Merit System Law and whose employment may be terminated only for cause.

(b) The director shall administer the provisions of Article 1 of this chapter under the supervision of the commission and in accordance with its policies.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 6.)

§ 8-6-56. Director--Qualifications; salary; interest in banks, etc., prohibited.

Current through the end of the 2010 Regular Session.

(a) The Director of the Securities Commission shall be a person of good moral character, at least 30 years of age, a resident of Alabama, a member of the Alabama bar and thoroughly familiar with corporate organization, investment banking, investment trusts, the sale of securities, and the statistical details of the manufacturing industries and commerce of this state. The Securities Commission may also require additional qualifications.

(b) The director, while serving as such, shall not directly or indirectly be financially interested in or associated with any commercial bank, savings bank, trust company, industrial loan or investment company, credit union, building and loan association, or any other person subject to the jurisdiction of the commission or the director thereof.

(c) The salary of the director shall be fixed by the commission in the salary range payable to attorneys in the merit system classification of attorney IV, as determined and set by the commission.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 7; Acts 1990, No. 90-527, p. 772, § 2.)

§ 8-6-57. Deputy director.

Current through the end of the 2010 Regular Session.

(a) With the approval of the Securities Commission and subject to the provisions of the merit system law, the director thereof may designate a deputy director, who shall possess qualifications fixed by the commission with the approval of the personnel department, and who shall perform such duties as the director shall designate.

(b) In the absence of the director or his inability to act, the deputy director shall perform such duties as are required to be performed by the director.

(c) The compensation of the deputy director shall be fixed by the commission, subject to the approval of the personnel department, in the salary range payable to attorneys in the Merit System classification of Attorney IV.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 8; Acts 1979, No. 79-462, p. 827, § 7; Acts 1990, No. 90-527, p. 772, § 2.)

§ 8-6-58. Personnel.

Current through the end of the 2010 Regular Session.

(a) The Director of the Securities Commission shall prepare in writing a manual of necessary employee positions for the commission, including job classifications, personnel qualifications, duties, maximum and minimum salary schedules, and other personnel information for approval by the commission.

(b) Subject to the provisions of the Merit System law, the director may select, appoint, and employ such accountants, auditors, financial analysts, special agents and senior special agents, clerks, and other

personnel as the director deems necessary for the proper administration of the Alabama securities laws including legal counsel to act as attorneys for the commission in actions or proceedings brought by or against the commission under or pursuant to any provision of law under the commission's jurisdiction, or in which the commission joins or intervenes as to a matter within the commission's jurisdiction, as a friend of the court or otherwise, and stenographic reporters to take and transcribe the testimony in any formal or informal hearing or investigation before the commission or before a person authorized by the commission.

(c) Special agents and senior special agents appointed pursuant to this section shall have the power to investigate matters within the commission's jurisdiction and in such capacity shall have the powers vested in peace officers and shall be considered law enforcement officers of the State of Alabama to enforce the laws of this state pertaining to the operation and administration of the commission and this chapter. Senior special agents and special agents shall exercise their power of arrest only when ordered by both the commission and a court of competent jurisdiction. The commission shall request a suspension or waiver of firearms requalification as provided in Rule 650-X-4.02 of the Alabama Peace Officers' Standards and Training Commission Code for law enforcement officers who are not required to carry or use a firearm. If a suspension or waiver cannot be obtained, senior special agents and special agents shall not carry firearms, except as required by P.O.S.T. training and continuing education. Nothing herein shall affect subpoena, visitation, examination, or other investigatory powers contained in this chapter.

(d) No person may serve as a special agent or senior special agent unless the person meets the minimum standards established for law enforcement officers by the Alabama Peace Officers' Standards and Training Commission or other standards as may be hereafter provided by law. Special agents and senior special agents appointed pursuant to subsection (b) shall meet such other additional standards as the director may adopt.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 10; Acts 1979, No. 79-462, p. 827, § 8; Act 2000-703, p. 1429, § 1.)

§ 8-6-59. Bonds of director and employees.

Current through the end of the 2010 Regular Session.

(a) Before assuming office, the Director of the Securities Commission shall give a bond in the sum of \$50,000, payable to the State of Alabama, to be approved by the Attorney General of Alabama and filed in the office of the Secretary of State. Such bond shall be conditioned that he will faithfully execute the duties of his office.

(b) The director may by rule or order require any employee of the commission to be bonded on the same condition and in the same or such lesser amount as he determines.

(c) The expense of all such bonds shall be paid from funds available to the commission.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 9.)

§ 8-6-60. Place of office.

Current through the end of the 2010 Regular Session.

The Securities Commission and the director thereof shall maintain offices in the capital city of the state, and all records of the commission shall be kept at these offices.

CREDIT(S)

(Acts 1969, No. 740, p. 1315, § 11.)

ARTICLE 3. . FIDUCIARY SECURITY TRANSFERS.

§§ 8-6-70 through 8-6-80. Repealed by Acts 1996, No. 96-742, p. 1241, § 1, effective January 1, 1997.

Current through the end of the 2010 Regular Session.

§§ 8-6-70 through 8-6-80. Repealed by Acts 1996, No. 96-742, p. 1241, § 1, effective January 1, 1997.

Current through the end of the 2010 Regular Session.

ARTICLE 4. . OWNERSHIP BY MINORS.

§ 8-6-90. Short title.

Current through the end of the 2010 Regular Session.

This article may be cited as the Securities Ownership by Minors Act.

CREDIT(S)

(Acts 1961, No. 1010, p. 1585, § 5.)

§ 8-6-91. Definitions.

Current through the end of the 2010 Regular Session.

In this article, unless the context otherwise requires, the following terms shall have the meanings ascribed to them by this section:

- (1) Bank. A bank, trust company, national banking association, savings bank, or industrial bank.
- (2) Broker. A person, including a bank, lawfully engaged in the business of effecting transactions in securities for the account of others and includes a broker lawfully engaged in buying and selling securities for his own account.
- (3) Issuer. A person who places, or authorizes the placing of, his name on a security other than as a transfer agent to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security or who becomes responsible for or in place of any such person.
- (4) Person. Such term includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity.
- (5) Security. Such term includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness or certificate of interest or participation in an oil, gas, or mining title or lease or in payment out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security or any certificate, interest or participation in any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
- (6) Third-party. A person other than a bank, broker, transfer agent, or issuer who with respect to a security held by a minor effects a transaction otherwise than directly with the minor.
- (7) Transfer agent. A person who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of securities in the issue of new securities or in the cancellation of surrendered securities.

CREDIT(S)

(Acts 1961, No. 1010, p. 1585, § 1.)

§ 8-6-92. Liability of bank, transfer agent, etc., for treating minor as having capacity to exercise security rights; presumption that holder not minor.

Current through the end of the 2010 Regular Session.

(a) A bank, broker, issuer, third-party or transfer agent incurs no liability by reason of his treating a minor as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security unless prior to acting in the transaction the bank, broker, issuer, third-party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a minor.

(b) Except as otherwise provided in this article, such a bank, broker, issuer, third-party or transfer agent may assume without inquiry that the holder of a security is not a minor.

CREDIT(S)

(Acts 1961, No. 1010, p. 1585, § 2.)

§ 8-6-93. Minor may not disaffirm security transaction unless prior written notice of minority given.

Current through the end of the 2010 Regular Session.

A minor who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy or made an election or exercised rights relating to the security has no right thereafter, as against a bank, broker, issuer, third-party or transfer agent, to disaffirm or avoid the transaction unless, prior to acting in the transaction, the bank, broker, issuer, third-party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received written notice in the office acting in the transaction that the specific security is held by a minor.

CREDIT(S)

(Acts 1961, No. 1010, p. 1585, § 3.)

§ 8-6-94. Right of minor to receive dividends, etc.

Current through the end of the 2010 Regular Session.

A minor may receive in his own right dividends or other moneys in respect to any securities standing in his name on the books of a corporation, bank, or business trust, and such receipt shall constitute a valid and sufficient release and discharge of the corporation, bank, or business trust for such dividends or other moneys paid to such minor, notwithstanding that the corporation, bank, or business trust may have actual or written notice of the minority of such person.

CREDIT(S)

(Acts 1961, No. 1010, p. 1585, § 4.)

§ 8-6-95. Certain laws not affected by article.

Current through the end of the 2010 Regular Session.

Nothing in this article shall be construed to repeal or in any way affect Sections 10-6-1 through 10-6-4.

CREDIT(S)

(Acts 1961, No. 1010, p. 1585, § 7.)

ARTICLE 5. . PRE-ISSUANCE PROCEDURE FOR INDUSTRIAL REVENUE BONDS.

§ 8-6-110. Definitions.

Current through the end of the 2010 Regular Session.

The following words and phrases, as used in this article, shall have the following meanings:

(1) Authorizing act. Any of the following statutes or acts:

a. Any of the following sections, as amended: Section 11-20-1 et seq., relating to industrial revenue bonds to be issued by counties; Section 11-54-20 et seq., relating to industrial revenue bonds to be issued by municipalities; Section 11-54-80 et seq., relating to industrial revenue bonds to be issued by municipal industrial development boards; Section 11-58-1 et seq., relating to industrial revenue bonds to be issued by municipal medical clinic boards, Section 22-21-170 et seq., relating to industrial revenue bonds to be issued by county and municipal hospital authorities; and Section 11-20-30 et seq., relating to industrial revenue bonds to be issued by county industrial development boards.

b. The following acts of the Alabama Legislature: Act No. 4, enacted at the 1956 Second Special Session of the Alabama Legislature (1956 Acts, p. 240 et seq.), relating to industrial revenue bonds to be issued by certain municipalities to finance hotel and motel projects and Act No. 337, enacted at the 1971 Third Extra Session of the Alabama Legislature (1971 Acts, p. 4625 et seq.), relating to industrial revenue bonds to be issued by certain municipalities to finance hotel and motel projects.

(2) Commission. The Alabama Securities Commission existing under Article 2 (commencing with Section 8-6-50) of Chapter 6 of Title 8.

(3) Director. The director appointed by the commission pursuant to Section 8-6-55 or, in the absence of the director or his or her inability to act, the deputy director appointed by the director as provided in Section 8-6-57.

(4) Governing body. The county commission, council, board of commissioners, board of directors, or other governing body of any issuer.

(5) Guarantor. The guarantor of the performance by the lessee of its obligations under a lease or the guarantor of any industrial revenue bonds.

(6) Improvident. With respect to any industrial revenue bonds the term means that there is a reasonable probability that the bonds will be deficient in one or more of the following respects:

a. The project may not be completed.

b. The principal of or interest on the industrial revenue bonds will not be paid when due.

c. The industrial revenue bonds may be sold or distributed by the parties or in a manner as to constitute a fraud on one or more purchasers of the bonds.

(7) Industrial revenue bonds. The bonds, warrants, notes, certificates of indebtedness, or other obligations issued by any issuer under the authority of the authorizing act to finance or refinance a project or to refund bonds, but does not include either of the following:

a. Any obligation unless the lessee is a lessee as defined in this section.

b. Any issue of bonds, warrants, notes, certificates of indebtedness, or other obligations, any of which has a stated maturity not more than 18 months from the date of its issuance and evidences a loan initially made by a bank to the issuer of the bonds, warrants, notes, certificates of indebtedness, or other obligations.

(8) Issuer. Any county, city, town, municipality, or public corporation issuing industrial revenue bonds under the authorizing act.

(9) Judicial validation. The procedure described in Section 8-6-119 by which industrial revenue bonds may be validated and culminating in a decree of the circuit court validating the bonds.

(10) Lease. The lease, installment purchase, or other agreement by which the lessee obtains the right to use the project and agrees to make payments sufficient to pay the principal of and interest on the industrial revenue bonds issued to finance or refinance the project.

(11) Lessee. The lessee, purchaser, or user of a project under the lease. The term does not include the State of Alabama, any county, any city, town, or municipality, any public corporation or any nonprofit corporation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private share holder, member, or individual.

(12) Notification. The instrument or the procedure, or both, by which an issuer is required by this article to notify the director prior to the proposed issuance of industrial revenue bonds.

(13) Project. Any land, plant, building, facilities, equipment, or other property proposed to be acquired with the proceeds of any industrial revenue bonds to be used by a lessee under a lease.

(14) Served upon the issuer. As applied to a stop order, notice of a reference to the commission, or of a hearing before the commission, the term means that it has been deposited in the United States mail in a sealed envelope with first class, certified postage prepaid, properly addressed to the issuer at the address shown in the notification, or delivered to the person who signed the notification on behalf of the issuer.

(15) Stop order. An order issued by the director or by the commission in accordance with this article prohibiting the issuer from issuing the industrial revenue bonds described in the notification or any bonds in lieu of those bonds.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 1; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-111. Legislative findings; purpose of article.

Current through the end of the 2010 Regular Session.

(a) The legislature finds and determines that unscrupulous promoters may take advantage of the authorizing act by inducing issuers to issue industrial revenue bonds which careful investigation by the issuer or other responsible parties would reveal to be improvident. The standing of all issuers could be impaired and the purposes of the legislature in enacting the authorizing act could be thwarted by those improvident issues.

(b) The purpose of this article is to provide a procedure whereby the State of Alabama, acting through the director and the commission, may assist in developing facts to aid the issuer in the exercise of its authority under the authorizing act, and, to that end, to delay the issuance of industrial revenue bonds pending adequate investigation by the director or to prevent the issue of industrial revenue bonds found to be improvident.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 2; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-112. Powers of director of Securities Commission.

Current through the end of the 2010 Regular Session.

(a) The director shall have authority to:

(1) Consider and investigate proposed issues of industrial revenue bonds;

(2) Advise and consult with issuers with respect thereto;

(3) Publish such notices of proposed issues of industrial revenue bonds or proposed rules and regulations as are required by this article or the rules and regulations of the commission;

(4) Stop the issuance of industrial revenue bonds for the limited times and under the procedures provided in this article by issuing the orders and giving the notices herein required;

(5) Cause information concerning a proposed issue of industrial revenue bonds to be presented at any meeting of the governing body at which industrial revenue bonds are to be authorized or reauthorized or any hearing upon the judicial validation of such issue; and

(6) Perform such other functions and duties as may be required by this article or by order of the commission.

(b) The authority herein granted to the director is in addition to that granted under Section 8-6-50 et seq. CREDIT(S)

(Acts 1978, No. 586, p. 681, § 3.)

§ 8-6-113. Powers of Securities Commission.

Current through the end of the 2010 Regular Session.

(a) The commission may:

(1) Stop the issuance of industrial revenue bonds under the procedures provided in this article.

(2) Issue rules and regulations necessary or desirable to prescribe the form and content of notifications, the conduct of investigations, the issuance of stop orders, appeals by issuers, or references by the director to the commission and the conduct of hearings thereon. No rule or regulation shall be adopted by the commission until the commission shall hold a public hearing on the proposed rules and regulations, notice of which shall be given by publication one time in a daily newspaper published in the City of Montgomery and in any other manner as the commission directs.

(b) The authority granted to the commission in this section is in addition to that granted under Section 8-6-50 et seq., or any other provided by law.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 4; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-114. Industrial revenue bond advisory council. Repealed by Acts 1992, No. 92-124, p. 224, § 6, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992. Current through the end of the 2010 Regular Session.

§ 8-6-115. Notifications of intent to issue bonds.

Current through the end of the 2010 Regular Session.

On and after May 27, 1978, any issuer proposing to issue any industrial revenue bonds under authority of the authorizing act shall, at least 20 days prior to the date of delivery of the industrial revenue bonds, deliver to the director a notification in writing of its intention to issue the bonds. The director may for good cause shown, waive, shorten, or, with the consent of the issuer, extend the 20-day requirement. The notifications shall contain the name and address of the issuer, the lessee, the guarantor, if any, the trustee, the underwriter, purchaser, fiscal agent, or agents, legal counsel for each of the above named parties and bond counsel, the estimated face amount of the bond issue, the estimated capital budget for the project to the extent that the information is available to the issuer when it files the notification, and any other information prescribed by the rules and regulations issued by the commission to advise the director and the commission of the nature of the proposed transaction. Each notification shall be accompanied by a filing fee equal to one twentieth of one percent of the principal amount of industrial revenue bonds described in the notification. No filing fee shall be less than \$25 nor greater than \$1,000. All fees shall be deposited in a special account in the State Treasury to be withdrawn by the director for the use of the commission in the administration of this article. All notifications shall be available for public inspection during the normal business hours of the director.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 6; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-116. Action by director upon receipt of notification; stop orders.]

Current through the end of the 2010 Regular Session.

Upon receipt of a notification, the director shall cause a preliminary investigation or inquiry to be made into the proposed issue to determine whether there exist circumstances which, in his or her opinion, indicate that the proposed issue of industrial revenue bonds may be an improvident issue. If he or she finds that the proposed issue may be improvident, he or she shall advise the issuer of the findings and shall issue a stop order or stop orders requiring that for a period of time not exceeding in the aggregate 90 days after the filing of the notification, the issuer shall not issue the industrial revenue bonds proposed in the notification or any industrial revenue bonds in lieu of the bonds proposed. When a stop order has been served upon the issuer, it shall be fully effective (a) unless lifted by the director or the commission for good cause shown, or (b) unless the proposed industrial revenue bonds described in the notification have been reauthorized by the governing body of the issuer at a meeting at which the governing body has considered any comments or objections presented by the director or his or her representative. Written notice of the meeting shall be given to the director. The notice shall also be published in a newspaper published or circulated in the county where the proposed issuer is located.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 7; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-117. Appeals or references to Securities Commission.

Current through the end of the 2010 Regular Session.

References

When a stop order has been issued by the director, the issuer shall have the right to appeal the matter to the commission by notice in writing of such appeal delivered to the director. The director shall have the right to refer to the commission the matter of any issue of industrial revenue bonds proposed in a notification as to which a stop order is then in effect or which have been reauthorized by the governing body of the issuer pursuant to Section 8-6-116, and to request that the commission issue a permanent stop order. Notice of such reference and request shall be given in writing and served upon the issuer. The director shall mail to each member of the council a copy of each notice required by this section as soon as it is delivered to him or prepared for service upon the issuer.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 8.)

§ 8-6-118. Proceedings before Securities Commission.

Current through the end of the 2010 Regular Session.

When the matter of any proposed industrial revenue bond issue has been appealed by the issuer to the commission or referred to the commission by the director with the request that the commission issue a permanent stop order, the director shall convene the commission. The commission shall conduct a hearing on the matter within 14 days after receipt by the director of the notice of appeal or service upon the issuer of the referral. At the request of the issuer, the date of the hearing may be postponed. Notice of the time, place, and purpose of the hearing shall be served upon the issuer at least three days before the date of the hearing. The issuer and other interested parties shall have the right to appear and be heard in person or by counsel. The commission shall render a decision within three days after the hearing. Pending the determination by the commission of any appeal or referral, the stop order previously issued by the director shall remain in effect until the commission renders a decision, or three days after the hearing, whichever is earlier. If, upon a hearing of the matter, the commission concludes that the proposed issue of industrial revenue bonds is improvident, the stop order previously issued by the director shall be made permanent and neither the proposed industrial revenue bonds nor any industrial revenue

bonds in lieu of the bonds shall be issued until approved by judicial validation in proceedings instituted by the proposed issuer after the issuance of the stop order. If the commission concludes that the issue is not improvident, the commission shall lift the stop order and the issuer may proceed to issue the proposed industrial revenue bonds.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 9; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-119. Judicial validation proceedings.

Current through the end of the 2010 Regular Session.

Any judicial validation proceeding instituted under this article shall conform to and be conducted in accordance with either Section 6-6-750 et seq. or Section 11-81-220 et seq., whichever is applicable to the issuer. The petition shall allege that the issue of industrial revenue bonds proposed by the issuer is not improvident, and the director shall be served with notice of the proceeding in the same manner and for the same time as the district attorney, and may attend the hearing before the circuit court having jurisdiction of the matter in person or by attorney, present evidence, and be heard by the court. The court shall not validate unless, pursuant to evidence presented at the hearing, the court finds and determines that the issue is not improvident. No judicial validation proceedings shall be instituted under this article until the commission enters a stop order or until the expiration of 15 days after the proposed industrial revenue bond issue is appealed by the issuer or referred to the commission by the director without any stop order having been issued.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 10; Acts 1992, No. 92-124, p. 224, § 3.)

§ 8-6-120. Certificate of notification; representation that industrial revenue bonds have been approved prohibited.

Current through the end of the 2010 Regular Session.

In the event that (1) 20 days shall have expired after the filing by an issuer of the notification required by Section 8-6-115 describing proposed industrial revenue bonds to be issued by it, or the director shall have waived, shortened or, with the consent of the issuer, extended such waiting period and (2) no stop order shall then be effective as to the proposed industrial revenue bonds, the director shall provide such issuer with a certificate substantially as follows:

CERTIFICATE OF NOTIFICATION

The of (the issuer) has filed in my office a notification under Act No. 586 of the 1978 Regular Session of the Alabama Legislature stating its intention to issue \$ of its Industrial Revenue Bonds and no stop order is effective as to the issue of such bonds. This certificate is not an approval of said bonds, and it is unlawful for any person to represent that such bonds have been approved by the director, the commission or any other agency of the state.

This day of, 19

Director

It shall be unlawful for any issuer to issue any industrial revenue bonds under the authority of the authorizing act unless the foregoing certificate with respect to such industrial revenue bonds shall have been issued by the director or unless the proposed industrial revenue bonds shall have been reauthorized by the governing body of the issuer pursuant to Section 8-6-116 or shall have been judicially validated pursuant to Sections 8-6-118 and 8-6-119. When a certificate of notification shall have been issued by the director, no stop order thereafter issued either by the director or the commission with respect to the industrial revenue bonds described in such certificate shall be effective unless, prior to the issuance of the industrial revenue bonds described in such certificate, such stop order shall have been served personally

upon the person who signed the notification in behalf of the issuer and upon each bond counsel named in the notification with respect to the industrial revenue bonds described in such certificate. When the industrial revenue bonds described in a certificate of notification shall have been issued, such certificate shall be conclusive evidence of formal compliance by the issuer with this article, and the failure of the issuer to comply with any requirement of this article in issuing the industrial revenue bonds described in such certificate shall not affect the validity of such industrial revenue bonds. In the event that any industrial revenue bonds shall be issued without a certificate of notification having been issued with respect thereto, the holder of any such bonds shall, in addition to any other right he may have by statute or law, have the right of rescission as to such bonds; provided, that such right shall be exercised within 12 months of the date on which such bonds shall have been delivered by the issuer and paid for; and provided further, that any right of recovery against the issuer shall be limited to the then unexpended proceeds of such bonds. In the event that the director shall refuse to issue a certificate of notification to any issuer entitled thereto, an appeal shall lie to the commission or the circuit court of Montgomery County, which shall have jurisdiction to require the director forthwith to issue any certificate wrongfully withheld.

It shall be unlawful for any issuer or any person, firm, or corporation to represent that an issue of industrial revenue bonds has been approved by the director or the commission or any agency of the state, whether the certificate herein provided for shall have been issued or not.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 11.)

§ 8-6-121. Criminal penalties.

Current through the end of the 2010 Regular Session.

Any lessee, any guarantor, or any officer of any issuer, lessee, or guarantor or any other person, firm, or corporation who:

- (1) Willfully violates this article;
 - (2) Willfully participates in the issuance of any industrial revenue bonds without having obtained the certificate of notification required by Section 8-6-120;
 - (3) Willfully participates in the issuance of any industrial revenue bonds in violation of this article;
 - (4) Willfully violates any stop order lawfully issued by the director or the commission under this article and in effect; or
 - (5) Makes or files or causes to be made or filed, with the director or the commission under this article, any statement, document, or other paper which is false in any material respect or matter;
- shall be guilty of a felony and upon conviction shall be fined not more than \$10,000 or shall be imprisoned for a period not exceeding 10 years or both so fined and so imprisoned, as the trial court shall determine. No prosecution under this section shall be commenced more than five years after the occurrence of the alleged violation.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 12.)

§ 8-6-122. Article remedial; certain statutes not repealed.

Current through the end of the 2010 Regular Session.

References

This article is remedial in nature and shall not be construed so as to repeal any provision of Section 8-6-1 et seq. or Section 8-6-50 et seq.

CREDIT(S)

(Acts 1978, No. 586, p. 681, § 13.)

ARTICLE 6. . UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT.

§ 8-6-140. Definitions.

Current through the end of the 2010 Regular Session.

For the purposes of this article, the following words have the following meanings unless the context otherwise requires:

- (1) Beneficiary form. A registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
- (2) Devisee. Any person designated in a will to receive a disposition of real or personal property.
- (3) Heirs. Those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
- (4) Person. An individual, a corporation, an organization, or other legal entity.
- (5) Personal representative. Includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.
- (6) Property. Includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- (7) Register. Including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.
- (8) Registering entity. A person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.
- (9) Security. A share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.
- (10) Security Account. a. A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or b. a cash balance or other property held for or due to the owner of a security as a replacement for a product of an account security, whether or not credited to the account before the owner's death.
- (11) State. Includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 1.)

§ 8-6-141. Registration--Beneficiary form.

Current through the end of the 2010 Regular Session.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 2.)

§ 8-6-142. Registration--Authorization.

Current through the end of the 2010 Regular Session.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 3.)

§ 8-6-143. Registration--Designation of a beneficiary.

Current through the end of the 2010 Regular Session.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 4.)

§ 8-6-144. Registration--Applicable language.

Current through the end of the 2010 Regular Session.

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 5.)

§ 8-6-145. Designation of TOD; registration cancelled or changed.

Current through the end of the 2010 Regular Session.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then surviving owners, without the consent of the beneficiary.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 6.)

§ 8-6-146. Death of owner.

Current through the end of the 2010 Regular Session.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 7; Act 98-279, p. 457, § 1.)

§ 8-6-147. Assent of owner; discharge from claims.

Current through the end of the 2010 Regular Session.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with Section 8-6-146 and does so in good faith reliance (1) on the registration, (2) on this article, and (3) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this article.

(d) The protection provided by this article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 8.)

§ 8-6-148. Transfer on death.

Current through the end of the 2010 Regular Session.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this article and is not testamentary.

(b) This article does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 9.)

§ 8-6-149. Terms and conditions of registration.

Current through the end of the 2010 Regular Session.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (1) for registrations in beneficiary form, and (2) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistrations to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances

needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 10.)

§ 8-6-150. Short title; construction.

Current through the end of the 2010 Regular Session.

(a) This article shall be known as and may be cited as the Uniform TOD Security Registration Act.

(b) This article shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this article among states enacting it.

(c) Unless displaced by the particular provisions of this article, the principles of law and equity supplement its provisions.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 11.)

§ 8-6-151. Application.

Current through the end of the 2010 Regular Session.

This article applies to registrations of securities in beneficiary form made before or after August 1, 1997, by decedents dying on or after August 1, 1997.

CREDIT(S)

(Acts 1997, No. 97-703, p. 1451, § 12.)

CHAPTER 7. SALE OF CHECKS.

§ 8-7-1. Short title.

Current through the end of the 2010 Regular Session.

This chapter shall be known and may be cited as the Sale of Checks Act.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 1.)

§ 8-7-2. Definitions.

Current through the end of the 2010 Regular Session.

For purposes of this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates a different meaning:

(1) Person. Any individual, partnership, association, joint stock association, trust, or corporation.

(2) Licensee. Any person duly licensed by the commission pursuant to this chapter.

(3) Check. Any check, draft, money order, or other instrument for the transmission or payment of money.

(4) Commission. The Alabama Securities Commission.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 2.)

§ 8-7-3. License--Required.

Current through the end of the 2010 Regular Session.

No person, as a service or for a fee or other consideration, shall engage in the business of selling, issuing, or otherwise dispensing checks or receiving money as agent for obligors for the purpose of paying such obligors' bills, invoices, or accounts without first obtaining a license from the commission pursuant to the provisions of this chapter.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 3.)

§ 8-7-4. License--Exemptions.

Current through the end of the 2010 Regular Session.

(a) Nothing in this chapter shall apply to the sale or issuance or dispensing of checks or the receiving of money as agent for obligors for the purpose of paying such obligors' bills, invoices, or accounts by:

(1) Banks, trust companies, and savings and loan associations organized under the laws of this state or of the United States;

(2) The government of the United States or any department or agency thereof; or

(3) The state of Alabama or any municipal corporation, county, or other political subdivision of this state.

(b) Neither shall this chapter apply to the receipt of money by an incorporated telegraph company or any agent thereof for immediate transmission by telegraph.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 4.)

§ 8-7-5. License--Application.

Current through the end of the 2010 Regular Session.

Each application for a license to engage in the business of selling or issuing or dispensing checks or receiving money as agent for obligors for the purpose of paying such obligors' bills, invoices, or accounts shall be made in writing and under oath to the commission in such form as it may prescribe. The application shall state the full name and business address of:

(1) The proprietor, if the applicant is an individual;

(2) Every member, if the applicant is a partnership or association, except that, if the applicant is a joint stock association having 50 or more members, the name and business address need be given only of the association and each officer and director thereof; or

(3) The corporation and each officer and director thereof, if the applicant is a corporation.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 5.)

§ 8-7-6. License--Investigation fee; license fee.

Current through the end of the 2010 Regular Session.

Each application for a license shall be accompanied by an investigation fee of \$250 and a license fee in the amount required by Section 8-7-9. The license fee shall be refunded if the application is denied. No investigation fee shall be refunded. All fees collected by the commission under the provisions of this chapter shall be deposited with the state treasurer and shall be set aside by him in a separate fund earmarked for the use of the commission in the administration and enforcement of this chapter.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 6; Acts 1991, No. 91-320, p. 584, § 2.)

§ 8-7-7. License--Certified financial statement; surety bond or deposit of securities; list of offices, etc.

Current through the end of the 2010 Regular Session.

Each application for a license shall be accompanied by:

- (1) Certified financial statements reasonably satisfactory to the commission showing that the applicant's net worth exceeds \$5,000;
- (2) A corporate surety bond in the principal sum of \$10,000 for the principal office plus an additional principal sum of \$5,000 for each additional location, office, or agency of such applicant in this state at which the business is to be conducted, but in no event shall the bond be required to be in a principal sum in excess of \$50,000. If the bond accompanying the application is in a principal sum less than \$50,000, the application shall also be accompanied by a list of the locations, offices, and agencies at which the business is to be conducted. The bond shall be in a form satisfactory to the commission and shall be issued by a bonding company or insurance company authorized to do business in this state to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant with respect to the receipt, transmission, and payment of money in connection with the sale or issuance or dispensing of checks or the payment of obligors' bills, invoices, or accounts; or
- (3) In lieu of such corporate surety bond, the applicant may deposit with the state treasurer bonds or other obligations of this state or of any municipal corporation, county, or other political subdivision or agency of this state in principal amount at least equal to that of the corporate surety bond otherwise required. Such bonds or obligations shall be deposited with the state treasurer to secure the same obligations as would a corporate surety bond, but the depositor shall be entitled to receive all interest and dividends thereon and shall have the right to substitute other bonds or obligations for those deposited with the approval of the commission and shall be required so to do on order of the commission made for good cause shown.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 7.)

§ 8-7-8. License--Issuance.

Current through the end of the 2010 Regular Session.

Upon the filing of the application, the payment of the investigation fee and license fee, and the approval by the commission of the bond or securities delivered pursuant to Section 8-7-7, the commission shall investigate the financial responsibility, financial and business experience, character and general fitness of the applicant and, if it deems it advisable, of its officers and directors, and, if it finds these factors and qualities meet the requirements of this chapter and are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently and in a manner commanding the confidence and trust of the community, it shall issue to the applicant a license to engage in the business of selling and issuing and dispensing checks and receiving money as agent of obligors for the purpose of paying such obligors' bills, invoices, or accounts subject to the provisions of this chapter.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 8.)

§ 8-7-9. License fees.

Current through the end of the 2010 Regular Session.

Each licensee shall pay to the commission with his application, and annually thereafter on or before April 1 of each year, a license fee of \$250 for the principal office and an additional \$5 for each additional location, office, or agency at which the business is to be conducted; provided, however, that no such additional fee shall be required for any agent or subagent of a licensee if the agent or subagent is

exempted by subdivision (a) (1) of Section 8-7-4; and provided further, that no person shall be required to pay an amount in excess of \$500 per year for a license under this section.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 9.)

§ 8-7-10. Employees, agents or representatives of licensees.

Current through the end of the 2010 Regular Session.

Each licensee may conduct business at one or more locations within this state and through or by means of such employees, agents, subagents, or representatives as such licensee may from time to time designate and appoint. No license under this chapter shall be required of any such employee, agent, subagent, or representative with respect to transactions in which he is acting for or in behalf of a licensee under this chapter.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 10.)

§ 8-7-11. Annual and supplemental listings of offices, etc.; adjustment of surety bond or deposit.

Current through the end of the 2010 Regular Session.

(a) Each licensee shall file with the commission annually on or before April 1 of each year a statement listing the locations, offices, and agencies authorized by the licensee to act for or on behalf of the licensee in selling or issuing or dispensing checks or receiving money as the agent of obligors for the purpose of paying such obligors' bills, invoices, or accounts.

(b) A supplemental statement setting forth any changes in the list of locations, offices, and agencies shall be filed with the commission on or before the first day of July, October, and January of each year, and the principal sum of the corporate surety bond or deposit required under Section 8-7-7 shall be adjusted, if appropriate, to reflect any increase or decrease in the number of locations, offices, and agencies. An additional \$5 for each new location, office, or agency shall be paid to the commission, unless the maximum license fee provided by Section 8-7-9 has already been paid. Such annual and supplemental statements shall not be required of any licensee who pays the maximum license fee provided by Section 8-7-9 and who continues to maintain a corporate surety bond or deposit in the principal sum of \$50,000.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 11.)

§ 8-7-12. Procedure for denial or revocation of license; judicial review.

Current through the end of the 2010 Regular Session.

(a) No license shall be denied or revoked except on 10 days' notice to the applicant or licensee. Upon receipt of such notice, the applicant or licensee may, within five days of such receipt, make written demand for a hearing. Pending final determination of the matter by the commission or by the courts, any revocation order shall be suspended, provided that the licensee posts a bond in an amount deemed adequate by the commission but not to exceed \$50,000. Such bond shall secure the same obligations as does the corporate surety bond or deposit required by Section 8-7-7, but shall be in addition to the bond or deposit required thereby. Upon receipt of such written demand, the commission shall thereafter, with reasonable promptness, hear and determine the matter as provided by law.

(b) If the applicant or licensee deems himself aggrieved by such determination or order of the commission, he may, within 15 days after such determination or order, have such determination or order reviewed by appeal to the circuit court of Montgomery County, Alabama, by filing a petition setting out the specific order or action or part thereof whereby such person deems himself aggrieved. All such petitions shall be given preferred settings and shall be heard by the court as speedily as possible. Such an appeal shall be perfected upon the posting of a bond for the costs of the appeal, accompanied by the said

petition. Any party of said appeal may appeal to the Supreme Court of Alabama from the judgment or order of the said circuit court in the manner provided in the Alabama Rules of Appellate Procedure.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 12.)

§ 8-7-13. Grounds for revocation of licenses.

Current through the end of the 2010 Regular Session.

The commission may at any time revoke a license, on any ground on which it might refuse to grant a license, for failure to pay an annual fee or for violation of any provision of this chapter, subject to the provisions of this chapter.

CREDIT(S)

(Acts 1960, Ex. Sess., No. 177, p. 2142, § 13.)

§ 8-7-14. Increase of surety bond or deposit.

Current through the end of the 2010 Regular Session.

Any provision of this chapter to the contrary notwithstanding, the commission may at any time, if in its opinion the protection of the public so requires, increase the principal sum of the bond or deposit required of any applicant or licensee by Section 8-7-7, but in no case shall the principal sum of the required bond or deposit exceed \$50,000, except as provided by Section 8-7-12.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 14.)

§ 8-7-15. Penalties for violation of provisions of chapter.

Current through the end of the 2010 Regular Session.

If any person to whom or which this chapter applies or any agent, subagent, or representative of such person violates any of the provisions of this chapter or attempts to transact the business of selling or issuing or dispensing checks or the business of receiving money as agent of obligors for the purpose of paying such obligors' bills, invoices, or accounts as a service or for a fee or other consideration without having first obtained a license from the commission pursuant to the provisions of this chapter, such person and each such agent, subagent, or representative shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$500, and may also be confined in the county jail or sentenced to hard labor for the county for not more than 12 months. Each violation shall constitute a separate offense.

CREDIT(S)

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 15.)

Commission Members



JOSEPH P. BORG
Director
J. RANDALL McNEILL
Deputy Director
EDWIN L. REED
General Counsel

ALABAMA SECURITIES COMMISSION

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Attorney at Law

JAMES L. HART
Certified Public Accountant

January 17, 2011

Department of Examiners of Public Accounts
State of Alabama
Montgomery, Alabama 36130

To Whom It May Concern:

Below please find a listing of the current Commissioners of the Alabama Securities Commission as of the date of this letter.

Hon. Luther Strange Attorney General State of Alabama Montgomery, Alabama Serves for Term in Office Male / White	John Harrison Banking Superintendent State of Alabama Montgomery, AL 36130 Serves for Term in Office Male / White	Jim Ridling Insurance Commissioner State of Alabama Montgomery, AL 36130 Serves for Term in Office Male / White
Hon. Andrew P. Campbell Attorney at Law Birmingham, AL 35203 Senate Confirmed: 5/8/08 Term Expires: 5/7/12 Male / White	Hon. S. Dagnal Rowe Attorney at Law Huntsville, AL 35801 Senate Confirmed: 5/6/08 Term Expires: 5/5/12 Male / White	Marcus J. Wolf Certified Public Accountant Montgomery, AL 36117 Senate Confirmed: 5/8/08 Term Expires: 5/7/12 Male / White
James L. Hart Certified Public Accountant Birmingham, AL 35209 Senate Confirmed: 12/9/10 Term Expires: 12/8/14 Male / White		

Additionally, the Director of the Alabama Securities Commission is:

Hon. Joseph P. Borg
Director
Alabama Securities Commission
Montgomery, AL 36130
Term began: 9/1994
Merit System Position
Male / White

If additional information is needed, please contact this office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Borg", is written over a printed name and title.

Joseph P. Borg
Director

JPB:cr

COMMISSION RESPONSE TO SIGNIFICANT ISSUES



ALABAMA SECURITIES COMMISSION

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JAMES L. HART
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June 9, 2011

Mr. John Norris
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Office of the Examiner of Public Accounts
50 North Ripley Street
Room 3201
Montgomery, Alabama 36104-3833

Via email to: john.norris@examiners.alabama.gov

Via hand delivery

Dear Mr. Norris;

The Alabama Securities commission is in receipt of your letter dated May 31, 2011 regarding the Sunset Review conducted by your office. We appreciate the professionalism and thoroughness of the audit as conducted by Ms. Robin Hutcheson and the follow up meeting with Mr. John Segrest. In response to your letter, we respond as follows to each of the issues presented:

Significant Issue 2011 – 01

The commission is planning for the added cost and workload of regulating additional investment advisers, which results from a provision of the federal Dodd-Frank Financial Reform Act of 2010 that shifts responsibility away from the Federal Securities and Exchange Commission and to the states. Effective July, 2011, responsibility for regulation of financial advisers by the states will include financial advisers who manage assets of up to \$100 million. Prior to the act, states were responsible for regulation of financial advisers who managed assets of up to \$25 million.

Joseph P. Borg, Director of the Alabama Securities Commission, stated that no one yet knows all of the financial ramifications the act will have on the states. He stated that currently, the biggest issue facing the commission is being required to review investment advisors having up to \$100 million in assets, which means an increase of about 50% over 2010 in the number of reviews required to be done

by the commission. The commission is in the process of hiring two more securities analysts and one trainee to help offset this increase.

By way of additional response, we advise that implementation of the new oversight has been delayed by the U.S. Securities and Exchange Commission until the first quarter of 2012 as the SEC has not yet completed the new rules to take effect. In the meantime, a number of Investment Advisor firms have begun the transfer from federal to state review and will be dual registered for the remainder of 2011. We expect the majority of the transfers to occur in the 1st quarter of 2012.

We are in the process of modifying our audit and exam processes as the examination/audit of a firm with \$50- \$100 million of assets under management will require substantially greater detailed review than a firm with \$25 million of assets under management. The composition and complexity of the larger operations are expected to be significantly different than the small advisors. We have completed the hires as mentioned in the Sunset Report (Significant Issue 2011-01) and the ASC staff is currently undergoing additional training as necessary to continue our functional analysis and review of these larger Investment Advisor firms. We are confident that the ASC staff will be properly prepared to undertake the increased work load and conduct the necessary audits and exams.

Significant Issue 2011 – 02

Only two of the seven commission members responded to our survey for this review. Consequently, the responses to our survey of commission members presented in this report may not reflect the position of the commission as a whole.

As the ASC staff is not aware of which Commissioners responded to the survey, we are unable to provide specific insight. However, we note that some turnover occurred in late 2010 in the composition of the Board of Commissioners. Please note that two Commissioners are new to the Commission as of late 2010, early 2011 and one other was not available for a period of time. We would be happy to have you meet with the Commissioners or provide additional information if requested.

Significant Issue 2011 – 03

Of the 225 licensees who responded to our questionnaire, 53 licensees, 23.6%, state they are not adequately informed by the Alabama Securities Commission of changes to and interpretations of Alabama Securities Commission positions, policies, rules and laws.

The commission has an informative website, newsletters for legislative updates, and annual reports. The commission also follows the state's Administrative Procedure Act for notice of rule changes, repeals, and new rules, which includes publication in the Administrative Monthly and a period reserved for public input.

The ASC staff has no direct comment with respect to the above statistic. However, please note that all individual licensees are subject to the policies and procedures of the ASC, the SEC and FINRA in varying degrees. Interpretive opinions (no action opinions) are provided specifically to those requesting same and are generally applicable only to a specific set of facts and circumstances. Also, specific policies and procedures are usually directed to the Broker Dealer and Investment Advisor firms for incorporation into their oversight procedures of the individual licensees. (All individuals holding a Broker Dealer representative license or Investment Advisor representative license are

required to be associated with a BD or IA firm and subject to that firm's supervision under both state and federal law).

We also note that ASC has been recognized as one of the most active state securities agencies in the country in meeting with the industry, conducting training programs and participating in state and regional conferences delivering specific content on the activities, policies and procedures of the Commission.

Lastly, the ASC has historically prepared a special report for the Sunset Committee and this review is no exception. Included (by hand delivery) please find a copy of the report which is being sent to each of the Members of the Sunset Committee.

Again, we thank you and your staff for the expertise demonstrated and the professionalism extended to our staff during the review process.

Sincerely,

Joseph P. Borg
Director